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# Executive Orders

## EXECUTIVE ORDER MJF 98-1

### Mississippi River Corridor Task Force

WHEREAS: it is the duty of the State of Louisiana to protect human health and conserve the environment from adverse effects of commercial and industrial development in accordance with Article IX, §1 of the Louisiana Constitution of 1974;

WHEREAS: the Louisiana Supreme Court has interpreted this constitutional public trust, imposed on all state environmental agencies and officials, as a "rule of reasonableness" which "does not establish environmental protection as an exclusive goal, but requires a balancing process in which environmental costs and benefits must be given full and careful consideration along with economic, social and other factors." *Save Ourselves, Inc. v. La. Environmental Control Commission*, 452 So. 2d 1152, 1157 (La. 1984);

WHEREAS: it is the goal of the State of Louisiana to help its citizens achieve economic self-sufficiency, as that status enhances the individual's sense of personal dignity and pride in community;

WHEREAS: in economically disadvantaged areas of the state, economic self-sufficiency and its enhancing effect on individual personal dignity can be achieved through economic development projects that infuse such areas with commercial and industrial jobs;

WHEREAS: in the past, commercial and industrial development projects have sometimes evoked from citizens environmental justice complaints made pursuant to Title V of the Clean Air Act and/or Title VI of the Civil Rights Act of 1964;

WHEREAS: the citizens of the state of Louisiana are best served by having their human health and environmental protection concerns, including those on disproportionate impact, addressed in a manner that not only protects human health and the environment, but also preserves economic opportunities in economically disadvantaged areas;

WHEREAS: environmental protection concerns about recent commercial and industrial development projects have been raised by citizens who reside in the Mississippi River Corridor, an area spanning both sides of the Mississippi River from Baton Rouge to New Orleans, encompassing 12 parishes which, according to the most recent Louisiana Toxic Release Inventory Report, have the highest amount of permitted releases in Louisiana;

WHEREAS: consistent with the above constitutional duty, it is the goal of the State of Louisiana to minimize disproportionate environmental impact and to afford potentially affected communities and groups the opportunity to voice their concerns about the potential adverse effects which a commercial or industrial development project might have on their community and to have these concerns properly considered; and

WHEREAS: the interests of the citizens of the state of Louisiana would be best served by the creation of a

multi-agency public body charged with identifying the various types of adverse human health and environmental concerns generated by entities seeking permits for future commercial and industrial expansion or development projects, particularly those pertaining to disproportionate environmental impact, and to provide the governor and state agencies with environmental permitting responsibility with objective recommendations regarding the most efficient and effective means to obtain and address public comment on all aspects of future proposals for development or expansion projects, including possible human health, environmental, and economic development issues, along with recommendations as to the resolution of any potentially conflicting concerns;

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

SECTION 1: The Mississippi River Corridor Task Force (hereafter "task force") is established within the Executive Department, Office of the Governor.

SECTION 2: The duties of the task force shall include, but are not limited to, holding public discussions and dialogue regarding the following:

A. identification of the types of adverse human health and environmental issues which may arise as a result of new permit applications to build, construct, or expand a commercial or industrial project;

B. examination of the issue of sustainability of environmental and economic resources, including quality of life and self-sufficiency;

C. development of a system of identification and prioritization of environmental and economic costs and benefits, which the Louisiana constitution requires to be reasonably balanced, that may directly or indirectly result from future proposals for commercial or industrial development or expansion projects, including but not limited to the cumulative chronic emission impact of a project on surrounding communities, the impact of a project on existing infrastructure, industrial support services, and residential and commercial businesses in surrounding communities, and the forecasted workforce and vocational skills training needs of the community which may result from a project's direct and indirect employment needs; and

D. evaluation of existing and potential alternative means to address the concerns of:

(1) communities and citizens residing in the vicinity of the development or expansion project;

(2) the industrial or commercial entity that is proposing the development and/or expansion project;

(3) state and local governments; and

(4) all other persons or entities that are or may be a stakeholder in the outcome of the development and/or expansion project.

SECTION 3: The task force shall submit no less than two written reports to the governor which address the issues set forth in Section 2. The task force shall provide a preliminary report by June 1, 1998, and a final, comprehensive report

containing recommendations by January 31, 1999.

SECTION 4: The task force shall be composed of at least 14 members appointed by and serving at the pleasure of the governor. The membership of the task force shall be selected as follows:

- A. the governor, or the governor's designee;
- B. the secretary of the Department of Environmental Quality, or the secretary's designee;
- C. the secretary of the Department of Economic Development, or the secretary's designee;
- D. the commissioner of the Department of Agriculture and Forestry, or the commissioner's designee;
- E. the secretary of the Department of Labor, or the secretary's designee;
- F. the secretary of the Department of Health and Hospitals, or the secretary's designee;
- G. the chair and three members of the task force on Environmental Protection and Preservation;
- H. the president of the statewide chapter of the NAACP;
- I. a president of a local branch of the NAACP;
- J. a member of a local branch of the NAACP who resides in the corridor; and
- K. a representative of a permitted facility in the corridor who has community outreach experience.

SECTION 5: The governor shall select the chair and vice-chair of the task force from its membership.

SECTION 6: The task force shall meet at the call of the chair.

SECTION 7: Support staff for the task force and facilities for its meetings shall be provided by the Office of the Governor and/or other state agencies.

SECTION 8: Task force members shall not receive compensation or a per diem. Nonetheless, contingent upon the availability of funds, a member who is not an employee of the State of Louisiana or one of its political subdivisions, or an elected official, may receive reimbursement with advance written approval of the Office of the Governor for actual travel expenses incurred, in accordance with state guidelines and procedures, upon the approval of the commissioner of Administration.

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

SECTION 10: This Order is effective upon signature and shall continue in effect until its expiration on January 31, 1999, unless amended, modified, terminated, or rescinded by the governor prior to that date, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 7th day of January, 1998.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9801#054

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Economic Development Racing Commission

Coupled Entries/Fields in  
Trifectas (LAC 35:XIII.11113)

The Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., repeals the following rule effective January 2, 1998, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever occurs first.

The Racing Commission finds it necessary to repeal this rule to eliminate the prohibition of coupled entries and fields in trifecta races.

### Title 35 HORSE RACING Part XIII. Wagering

#### Chapter 111. Trifecta

##### §11113. Coupled Entries; Fields

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 11:616 (June 1985), repealed by the Department of Economic Development, Racing Commission, LR 24:

Paul D. Burgess  
Executive Director

9801#010

## DECLARATION OF EMERGENCY

### Department of Economic Development Racing Commission

Pari-Mutuel Tickets (LAC 35:XV.12341)

The Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule, effective December 19, 1997, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever occurs first.

The Racing Commission finds it necessary to amend this rule

to provide for conditions of issued pari-mutuel tickets and refunds thereof. It also corrects the language of the previous version of this rule.

### Title 35 HORSE RACING

#### Part XV. Off-Track Wagering

#### Chapter 123. General Rules

##### §12341. Pari-Mutuel Tickets

A. - B. ...

C. When wagers are accepted by a host track, guest track or off-track wagering facility and a pari-mutuel ticket is issued therefor, such wagers are to be considered enforceable contracts, evidenced by possession of winning tickets; and such tickets shall be honored by all cashiers of the host track and the off-track wagering facility where such wagers are placed. Refunds of wagers shall be made only:

1. on a horse that is scratched; or
2. if a race is declared off; or
3. if a manual merge is rendered impossible because of

an act or event beyond the control of a host track and/or the host track's off-track wagering facility including, but not limited to, a catastrophe or acts of God. However, if a licensee, while participating in a common pooled wagering network with one or more other tracks, experiences transmission failure or other malfunctions with either the guest or host totalizator system which prevents the merger or required wagering data, then, in such events, the licensee shall honor the pari-mutuel ticket.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:176 and R.S. 4:211-227.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 14:290 (May 1988), amended by the Department of Economic Development, Racing Commission, LR 17:261 (March 1991), LR 24:

Paul D. Burgess  
Executive Director

9801#001

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of Public Health

Shellfish Harvest Permitting

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health is amending the rules pertaining to harvesting shellfish for

deputation and low acid canning.

These changes will make it permissible for the oyster industry to harvest the product from waters that have been historically considered off limits for bacteriological reasons when taken under a new permit system authorized by the amended rule. The rule change will open up over 50 percent of this state's productive oyster reefs that were formerly closed to harvesting by the state health officer, and has the potential of offering significant financial relief to an economically distressed industry. The oyster canning season traditionally ends in mid April of each year and unless the proposed rule change is promulgated immediately on an emergency basis, the entire window of opportunity for taking advantage of this new rule will be lost.

The effective date of this rule is January 1, 1998 and shall remain in effect for 120 days or until the final rule takes effect through the normal promulgation process, whichever occurs first.

*(Editor's Note: The following is an amendment to the Food, Drug and Cosmetic Regulations dated September, 1968 [the "Red Book"]. These proposed rules amend Chapter 4, Part I, specifically, Shellfish Depuration and Thermal Processing (Low Acid Canned) Regulations. A copy of the "Red Book" is available for inspection at any Office of Public Health regional office and at the Office of the State Register.)*

**49:6.1230 Depuration and Thermal Processing (Low Acid Canned) Harvesting Permit**

A. Any person, firm or corporation engaging in the business of harvesting shellfish for depuration or thermal processing (low acid canned) purposes from areas not approved by the state health officer for direct market harvesting shall be required to have an unsuspended or unrevoked harvesting-for-depuration or thermal processing permit issued by the Department of Health and Hospitals. Growing waters to be utilized for harvesting purposes must meet or exceed the Department of Health and Hospitals' criteria for restricted area classification. A fee of \$50 shall be charged for each 30-day permit.

B. Harvesting-for-depuration or thermal processing (low acid canned) permits shall be granted only to responsible individuals with no recent history of illegal harvesting violations under the following conditions:

1. no permittee, vessel captain or crew member may serve on any vessel subject to this permit who has been cited or found guilty of violations relative to the harvesting of shellfish within three years of the application date; provided, however, that said permittee, crew member or vessel captain may receive a waiver of this condition with regard to those citations which did not result in a conviction upon the appropriate showing being made to the Department of Wildlife and Fisheries;

2. a \$5,000 cash bond consisting of a bank cashier's check or money order made payable to the Department of Health and Hospitals shall be posted by each permittee;

3. harvesting and transporting of shellfish to depuration plants shall be permitted only during daylight hours with all activities completed no later than 30 minutes after official sunset each day. Harvesting of shellfish for thermal processing (low acid canned) plants shall be permitted only during daylight hours with all activities completed no later than 30 minutes after official sunset each day. Transportation of shellfish intended for thermal processing (low acid canned)

shall be allowed at all times;

4. the permittee shall be responsible for notifying the Department of Wildlife and Fisheries prior to leaving port to fish under permitted conditions and immediately upon returning from permitted trip each day. The Department of Wildlife and Fisheries shall be notified by calling 1-800-442-2511;

5. all areas utilized for harvesting-for-depuration and thermal processing (low acid canned) purposes shall be *red flagged* so that they may be easily spotted by both aircraft and boat. *Red flagged*, as used in this Paragraph, means that the four outside corners of an area must be marked with poles with red flags attached;

6. the sacking of shellfish and the storage of empty shellfish sacks aboard permitted vessels is prohibited;

7. all harvesting and transporting of shellfish for delivery to a depuration or thermal processing (low acid canned) plant shall be done in the direct line of sight of a commissioned municipal, parish, or state police officer. The payment of the surveillance officer's salary and expenses shall be the responsibility of the permittee;

8. a maximum of five harvest boats may be included on one permit under the following conditions:

a. the permittee, vessel captain and crew members shall all be held liable for rule violations;

b. all vessels or transporting vehicles must be in direct line of sight of state-approved surveillance officer during harvesting and transporting of shellfish to the depuration or thermal processing (low acid canned) plant;

c. each permitted vessel shall have the permit number in at least 6-inch high letters on a contrasting background so as to be visible from low flying aircraft or from any other enforcement vessels in the immediate area;

9. failure to comply with any of the permitting requirements specified in this Section shall result in the following administrative actions:

a. the harvesting-for-depuration or thermal processing (low acid canned) permit and all permitting privileges shall be immediately suspended by the Department of Wildlife and Fisheries or the Department of Health and Hospitals;

b. at the discretion of the Department of Health and Hospitals and the Department of Wildlife and Fisheries, all shellfish harvested for depuration or thermal processing (low acid canned) purposes shall be returned to the original growing waters or destroyed at the permittee's expense;

c. if said changes are upheld in an administrative hearing, the following additional penalties shall be imposed:

i. harvesting-for-depuration, thermal processing (low acid canned) and transplant permitting privileges shall be denied for a period of three years;

ii. the \$5,000 cash bond posted by the permittee shall be forfeited and retained by the state.

Bobby P. Jindal  
Secretary

9801#006

## DECLARATION OF EMERGENCY

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

#### Medicaid Eligibility—Continuity of Stay for Long-Term Care and Home and Community Based Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Bureau of Health Services Financing has consistently applied continuity of stay as a condition for ongoing Medicaid eligibility for long-term care and home and community based services. Continuity of stay is considered to be interrupted when a recipient either is absent from a facility or does not receive waiver services for a period of more than 14 consecutive days, even if the recipient was not discharged from the facility or waiver. As a result of a clarification from the Health Care Financing Administration (HCFA), the bureau has decided to revise the continuity of stay requirement to allow up to 30 consecutive days for temporary absence from a facility or nonreceipt of waiver services before continuity of stay is considered to be interrupted for individuals eligible under the special income level.

An emergency rule, effective September 23, 1997, was promulgated in order to protect the health and welfare of Medicaid recipients who receive long-term care and home and community based services by assuring continued eligibility for these services when continuity of stay is interrupted for a period of less than 30 days. No change in expenditures is anticipated as a result of implementation of this emergency rule.

#### Emergency Rule

Effective January 21, 1998, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following requirement governing continuity of stay for the purpose of determining continued eligibility for long-term care and home and community based services. In addition, the adoption of this emergency rule revises the continuity of stay requirement contained in Section I of the Medicaid Eligibility Manual as follows:

A temporary absence from a facility or nonreceipt of waiver services shall be allowed for a period up to 30 consecutive days before continuity of stay will be considered interrupted for individuals eligible under the special income level.

Bobby P. Jindal  
Secretary

9801#050



## DECLARATION OF EMERGENCY

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

#### Mentally Retarded/Developmentally Disabled—Pinecrest Waiver Slot Allocation

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing administers the Mentally Retarded/Developmentally Disabled (MR/DD) waiver under Home and Community Based Services Waiver Programs. The bureau adopted regulations governing the MR/DD Waiver Program to terminate the previous restrictions placed on the assignment of vacated waiver slots; establish methodology for the assignment of slots vacated by discharged waiver participants and the 342 previously unoccupied slots; and clarify policies on admission and discharge criteria, mandatory reporting requirements and the effective date on which Medicaid reimbursement for waiver services shall begin (*Louisiana Register*, Volume 23, Number 6).

Effective October 1, 1997, the department determined that it was necessary to amend the language in the June 20, 1997 rule regarding the allocation of waiver slots to residents of the Pinecrest Developmental Center. The language is being amended to include the Hammond Developmental Center in the targeted groups for slot allocation in the following manner. A maximum of 160 slots shall be available to current residents of the Pinecrest and Hammond Developmental Centers or their alternates who successfully complete the financial and medical certification eligibility process and are certified for the waiver. The term *alternate* is defined as a current resident of a private ICF-MR community home who:

1. willingly chooses to apply for waiver participation; and
2. resides in a community group home that has agreed to accept a Pinecrest or Hammond Developmental Center resident for placement if a resident of the community home is certified for waiver participation. The Pinecrest or Hammond resident must be given freedom of choice in the selection of a private ICF-MR community home placement in the area of the resident's choice, based on availability. The slot in the community home, if vacated, will remain a slot for a Pinecrest or Hammond Developmental Center recipient as long as the department continues to transition individuals from the developmental centers. DHH, through OCDD, reserves the right of approval for the transitioning of these recipients into vacated slots.

This subsequent emergency rule is necessary to assure the health and welfare of residents of Pinecrest Developmental Center, Hammond Developmental Center and private ICF-MR community homes by assuring access to those services appropriate to meet their needs.

#### Emergency Rule

Effective January 29, 1998, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the language contained in the June 20, 1997 rule regarding the allocation of waiver slots to residents of the Pinecrest Development Center:

A maximum of 160 slots shall be available to current residents of the Pinecrest and Hammond Developmental Centers or their alternates who successfully complete the financial and medical certification eligibility process and are certified for the waiver. The term *alternate* is defined as a current resident of a private ICF-MR community home who:

1. willingly chooses to apply for waiver participation; and
2. resides in a community group home that has agreed to accept a Pinecrest or Hammond Developmental Center resident for placement if a resident of the community home is certified for waiver participation. The Pinecrest or Hammond resident must be given freedom of choice in the selection of a private ICF-MR community home placement in the area of the resident's choice, based on availability. The slot in the community home, if vacated, will remain a slot for a Pinecrest or Hammond Developmental Center recipient as long as the department continues to transition individuals from the developmental centers. DHH, through OCDD, reserves the right of approval for the transitioning of these recipients into vacated slots.

Bobby P. Jindal  
Secretary

9801#051

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

Family Independence Temporary Assistance Program (FITAP)—Alien Eligibility (LAC 67:III.1141 and 1143)

The Department of Social Services, Office of Family Support has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt the following emergency rule in the Family Independence Temporary Assistance Program (FITAP). It is necessary to extend emergency rulemaking, since the declaration of emergency of October 1, 1997 was effective for a maximum of 120 days and would expire (on January 30) before the final rule takes effect March 1, 1998.

Pursuant to provisions of Public Law 104-208, the United States' Omnibus Consolidated Appropriations Act and Public Law 105-33, the Balanced Budget Act of 1997, a change in FITAP policy concerning the eligibility of certain aliens is

required. This emergency rule is necessary to effect these mandated regulations to avoid sanctions or penalties which could be imposed by further delaying implementation.

#### **Title 67**

### **SOCIAL SERVICES**

#### **Part III. Office of Family Support**

#### **Subpart 2. Family Independence Temporary Assistance Program (FITAP)**

#### **Chapter 11. Application, Eligibility, and Furnishing Assistance**

#### **Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance**

#### **§1141. Eligibility Requirements for Aliens**

A.1. - 4. ...

5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by §305(a) of Division C of Public Law 104-208);

6. an alien who is granted conditional entry pursuant to §203(a)(7) of such Act, as in effect prior to April 1, 1980; or

7. an alien who is a *Cuban* or *Haitian* entrant, as defined in §501(e) of the Refugee Education Assistance Act of 1980;

8. an alien who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse's or parent's family residing in the same household as the alien if the spouse or parent consented to, or acquiesced in, such battery or cruelty. The individual who has been battered or subjected to extreme cruelty must no longer reside in the same household with the individual who committed the battery or cruelty. The agency must also determine that a substantial connection exists between such battery or cruelty and the need for the benefits to be provided. The alien must have been approved or have a petition pending which contains evidence sufficient to establish:

a. the status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of §204(a)(1)(A) of the Immigration and Nationality Act (INA); or

b. the classification pursuant to clause (ii) or (iii) of §204(a)(1)(B) of the INA; or

c. the suspension of deportation and adjustment of status pursuant to §244(a)(3) of the INA; or

d. the status as a spouse or child of a United States citizen pursuant to clause (i) of §204(a)(1)(A) of the INA, or classification pursuant to clause (i) of §204(a)(1)(B) of the INA;

9. an alien child or the alien parent of a battered alien as described in §1141.A.8.

B.1. - 2. ...

3. the alien's deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by §305(a) of Division C of Public Law 104-208);

4. the alien is a *Cuban* or *Haitian* entrant, as defined in §501(e) of the Refugee Education Assistance Act of 1980;

5. the alien is an *Amerasian* immigrant admitted pursuant to §584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988;

6. the alien is lawfully residing in the United States and is a *veteran* (as defined in §§101, 1101, or 1301, or as described in §107 of Title 38, *United States Code*) who is honorably discharged for reasons other than alienage and who fulfills the minimum active-duty service requirements of §5303A(d) of Title 38, *United States Code*; his spouse or the unremarried surviving spouse if the marriage fulfills the requirements of §1304 of Title 38, *United States Code*; and unmarried dependent children; or

7. the alien is lawfully residing in the United States and is on active duty (other than for training) in the Armed Forces and his spouse or the unremarried surviving spouse, if the marriage fulfills the requirements of §1304 of Title 38, *United States Code*, and unmarried dependent children.

C. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:48687 et seq., P.L. 104-193, P.L. 104-208, and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Eligibility Determinations, LR 14:280 (May 1988), LR 14:438 (July 1988), amended by the Department of Social Services, Office of Family Support, LR 23:448 (April 1997), LR 24:

#### **§1143. Income and Resources of Alien Sponsors**

In determining eligibility and benefit amount for an alien other than those identified in §1141.A.8 and 9, the income and resources of his/her sponsor and the sponsor's spouse must be considered. The income and resources of an alien sponsor and the sponsor's spouse shall not apply to benefits during a 12-month period for those aliens identified in §1141.A.8 and 9. After a 12-month period, only the income and resources of the batterer shall not apply if the alien demonstrates that such battery or cruelty has been recognized in an order of a judge or administrative law judge or a prior determination of the INS, and the agency determines that such battery or cruelty has a substantial connection to the need for benefits. A *sponsor* is defined as any person who executed an affidavit of support pursuant to §213A of the Immigration and Nationality Act on behalf of the alien. The income and resources of the sponsor and the sponsor's spouse shall apply until the alien:

1. achieves United States citizenship through naturalization; or

2. has worked 40 qualifying SSA quarters of coverage, or can be credited with such qualifying quarters, and in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means-tested public benefit during any such period. In determining the number of qualifying quarters of coverage an alien shall be credited with:

a. all of the qualifying quarters of coverage worked by a parent of such alien while the alien was under age 18; and

b. all of the qualifying quarters worked by a spouse of such alien during their marriage, and the alien remains married to such spouse or such spouse is deceased.

3. No such qualifying quarter of coverage that is creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien under §1143.A.2.a or b if the parent or spouse of such alien received any federal means-tested public benefit (as provided under §403) during the period for which such

qualifying quarter of coverage is so credited. Notwithstanding §6103 of the *Internal Revenue Code* of 1986, the commissioner of Social Security is authorized to disclose quarters of coverage information concerning an alien and an alien's spouse or parents to a government agency for the purposes of this title.

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-35, P.L. 100-485 (§402) and 45 CFR 205-206,233-234, P.L. 104-193, P. L. 104-208, and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), amended by the Department of Social Services, Office of Family Support, LR 23:448 (April 1997), LR 24:

Madlyn B. Bagneris  
Secretary

9801#046

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

Food Stamps—Alien Eligibility  
(LAC 67:III.1994 and 1995)

The Department of Social Services, Office of Family Support has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt the following emergency rule in the Food Stamp Program. It is necessary to extend emergency rulemaking, since the declaration of emergency of October 1, 1997 was effective for a maximum of 120 days and would expire (on January 30) before the final rule takes effect March 1, 1998.

Pursuant to provisions of Public Law 104-208, the United States' Omnibus Consolidated Appropriations Act of 1996, and Public Law 105-33, the Balanced Budget Act of 1997, a change in food stamp policy concerning the eligibility of certain aliens is required. This emergency rule is necessary to effect these mandated regulations to avoid sanctions or penalties which could be imposed by further delaying implementation.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Office of Family Support

#### Subpart 3. Food Stamps

#### Chapter 19. Certification of Eligible Households

#### Subchapter K. Action on Households with Special Circumstances

#### §1994. Alien Eligibility

A.1. - 2. ...

3. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before effective date of §307 of division C of P.L. 104-208) or §241(b)(3) of such Act (as amended by §305(a) of division C of P.L. 104-208);

4. *Cuban* and *Haitian* entrants, as defined in §501(e) of the Refugee Education Assistance Act of 1980;

5. *Amerasian* immigrants admitted pursuant to §584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988.

B. ...

1. veterans who have met the minimum active duty service requirements of §5303 A(d) of Title 38, *United States Code*, who were honorably discharged for reasons other than alienage and their spouses or unremarried surviving spouses, if the marriage fulfills the requirements of §1304 of Title 38, *United States Code*, and unmarried dependent children;

2. active duty personnel (other than active duty for training) and their spouses or unremarried surviving spouses, if the marriage fulfills the requirements of §1304 of Title 38, *United States Code*, and unmarried dependent children;

3. ...

C. An alien and/or child of an alien or the alien parent of a child who has been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented to, or acquiesced in, such battery or cruelty is eligible if the agency providing the benefits determines there is a substantial connection between such battery or cruelty and the need for benefits to be provided. The individual who has been battered or subjected to extreme cruelty must no longer reside in the same household with the individual who committed the battery or cruelty. Additionally, the alien must have been approved or have a petition pending which contains evidence sufficient to establish:

1. the status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of §204(a)(1)(A) of the INA; or

2. the classification pursuant to clause (ii) or (iii) of §204(a)(1)(B) of the INA; or

3. the suspension of deportation and adjustment of status pursuant to §244(a)(3) of the INA; or

4. the status as a spouse or child of a United States citizen pursuant to clause (i) of §204(a)(1)(A) of the INA, or classification pursuant to clause (i) of section 204(a)(1)(B) of the INA.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 104-208, and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), amended LR 24:

#### §1995. Sponsored Aliens

The full amount of income and resources of an alien's sponsor and the sponsor's spouse are counted in determining the eligibility and allotment level of a sponsored alien until the alien becomes a citizen or has worked 40 qualifying quarters of Social Security coverage. These provisions do not apply to battered aliens, their children, or the alien parent of a battered child.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.11, P.L. 104-193, P.L. 104-208, and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), amended LR 24:

Madlyn B. Bagneris  
Secretary

9801#042

# DECLARATION OF EMERGENCY

## Department of Social Services Office of the Secretary and Office of Family Support

Child Care Assistance Program (LAC 67:I.101-107)  
(LAC 67:III.1181, 2913 and 5101-5109)

The Department of Social Services, Office of the Secretary and Office of Family Support exercises the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt the following emergency rule. It is necessary to extend emergency rulemaking, since the declaration of emergency of October 1, 1997 was effective for a maximum of 120 days and would expire on January 30, 1998 before the final rule takes effect March 1, 1998.

Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, empowered the state to consolidate all child care programs administered by the Department of Social Services into a single child care program. The program will be administered entirely through the Office of Family Support. This emergency rule proposes to consolidate the current Child Care Assistance Program, administered through the Office of the Secretary, with other existing child care regulations in the Family Independence Temporary Assistance Program, Transitional Child Care, and the Family Independence Work Program. Consolidation, therefore, requires repeal and revision of all LAC 67:I and III. Sections containing regulations which will now be promulgated in LAC 67:III.Subpart 12.

The Office of Family Support has submitted its Child Care State Plan to the governing federal agency to consolidate regulations effective October 1, 1997, and the federal fiscal year begins October 1. Therefore, an emergency rule is necessary to avoid sanctions or penalties which could be imposed by delaying the action.

### **Title 67**

### **SOCIAL SERVICES**

### **Part I. Office of the Secretary**

### **Chapter 1. Reserved. (Previously Child Care Assistance Program)**

#### **§101. Eligibility Requirements**

Repealed effective October 1, 1997.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, Parts 255 and 257, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 18:288 (March 1992), amended LR 18:1133 (October 1992), LR 18:1415 (December 1992), LR 19:1440 (November 1993), LR 20:459 (April 1994), LR 20:794 (July 1994), LR 20:899 (August 1994), LR 21:589 (June 1995), LR 23:527 (May 1997), repealed by the Office of the Secretary and Office of Family Support, LR 24:

#### **§103. Funding Availability and Waiting Lists**

Repealed effective October 1, 1997.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and Parts 255 and 257.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 18:288 (March 1992), amended LR 18:1269 (November 1992), LR 19:1441 (November 1993), LR 20:460 (March 1994), LR 20:900 (August 1994), LR 21:839 (August 1995), repealed by the Office of the Secretary and Office of Family Support, LR 24:

#### **§105. Child Care Providers**

Repealed effective October 1, 1997.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 18:288 (March 1992), amended LR 18:1269 (November 1992), LR 19:659 (May 1993), LR 19:784 (June 1993), LR 19:1034 (August 1993), LR 19:695 (November 1993), LR 20:459 (April 1994), LR 21:839 (August 1995), repealed by the Office of the Secretary and Office of Family Support, LR 24:

#### **§107. Payment**

Repealed effective October 1, 1997.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 18:1269 (November 1992), amended LR 19:695 (November 1993), LR 20:459 (April 1994), LR 21:839 (August 1995), repealed by the Office of the Secretary and Office of Family Support, LR 24:

### **Part III. Office of Family Support**

#### **Subpart 2. Family Independence Temporary Assistance Program**

#### **Chapter 11. Application, Eligibility, and Furnishing Assistance**

##### **Subchapter E. Transitional Child Care Assistance**

#### **§1181. Eligibility, Fees, and Payments**

Repealed effective October 1, 1997.

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:42146 et seq. and 45 CFR Parts 255 and 257.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:238 (March 1990), amended by the Department of Social Services, Office of Family Support, LR 18:244 (March 1992), LR 18:687 (July 1992), LR 18:1268 (November 1992), repealed by the Office of the Secretary and Office of Family Support, LR 24:

#### **Subpart 5. Family Independence Work Program**

#### **Chapter 29. Organization**

##### **Subchapter C. Activities and Services**

#### **§2913. Support Services**

Support services include child care, transportation, and other employment-related expenses designed to eliminate or moderate the most common barriers to employment.

1. Effective October 1, 1997, child care support services and payments are administered through the Child Care Assistance Program, LAC 67:III. Subpart 12.

2 - 3. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:42146 et seq., 45 CFR Parts 250, 255, R.S. 46:456 and 457, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:309 (March 1991), amended LR 17:388 (April 1991), LR 18:244 (March 1992), LR 18:687 (July 1992), LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 19:504 (April 1993), LR 20:793 (July 1994), LR 23:451 (April 1997), amended by the Office of the Secretary and Office of Family Support, LR 24:

### **Subpart 12. Child Care Assistance**

#### **Chapter 51. Child Care Assistance Program**

#### **§5101. Authority**

The Child Care Assistance Program is established effective October 1, 1997 and administered under the authority of state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary and Office of Family Support, LR 24:

#### **§5103. Conditions of Eligibility**

A. Family Independence Temporary Assistance Program (FITAP) recipients who are satisfactorily participating in the Family Independence Work Program, as determined by the case manager, are eligible.

B. Low-income families not receiving FITAP cash assistance, including former FITAP recipients who are given priority consideration and guaranteed entry into the child care system for 24 months from termination of the cash payment, must meet the following eligibility criteria:

1. A household consists of a case head, that person's spouse, all children under the age of 18 who are dependent on the case head and/or spouse, and the parent(s) of dependent children if the parent(s) lives in the home. The household must reside in Louisiana to be eligible for child care assistance.

2. The household includes a child in need of child care services who is under age 13, or age 13 to age 18 and physically or mentally incapable of caring for himself or herself, as verified by a physician or certified psychologist, or under court supervision.

3. The child must customarily reside at least one-half of the time with the person who is applying for child care services and who is employed or attending a job training or educational program that is legally authorized by the state. The case head, that person's spouse, and any parents of dependent children, if the parent(s) lives in the household, must be employed or in training, unless disabled as established by receipt of SSA, SSI, worker's compensation, or other disability benefits.

4. Household income does not exceed 85 percent of the state median income for a household of the same size. *Income* is defined as the gross earnings of the case head, that person's spouse, and any parents of dependent children, if the parent(s) lives in the household, from all sources of employment, and the following types of unearned income: Social Security benefits, veterans' benefits, retirement benefits, disability benefits, child support and/or alimony, unemployment compensation benefits, worker's compensation, and Supplemental Security Income of all household members.

5. Noncitizens who are *qualified aliens*, as defined in LAC 67:III.1141 and 1143, may be eligible.

6. The family requests child care services, provides the information necessary for determining eligibility and benefit amount, and meets appropriate application requirements established by the state.

7. Applicants must provide verification to establish eligibility. Verification shall include Social Security cards for

all household members, birth certificates for all children, proof of all household income, and proof of the hours of employment or training for which child care services are required.

C. Eligible cases are assigned a certification period of up to 12 months. The household is required to report any changes that could affect eligibility or benefit amount within 10 days of knowledge of the change. Failure to report a change that affects eligibility or benefit amount can result in action to recover ineligible benefits.

D. Recipients will be disqualified in all cases in which the recipient has received child care benefits for which he is ineligible; the unrecovered amount of such benefits is at least \$200; and the recovery account was established after September 30, 1994. The disqualification shall be for a period of months equal to the unrecovered amount divided by the total estimated monthly benefit amount for which the household would otherwise be eligible. If the recipient is currently receiving benefits, the case shall be closed and the recipient may not reapply during the disqualification period. If the recipient is not receiving benefits and subsequently reapplies and is found eligible, the application is denied. The recipient may not be certified during the disqualification period.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary and Office of Family Support, LR 24:

**§5105. Funding Availability**

Louisiana's share of the national total of available funds for child care programs is based on factors determined by federal law and regulation. Funds are appropriated by Congress and allocated on an annual basis. The number of children who can be served by the Child Care Assistance Program is limited by the amount of funding available.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary and Office of Family Support, LR 24:

**§5107. Child Care Providers**

A. The parent or guardian is assured freedom of choice in selecting from a variety of child care providers, including center-based child care, family day care homes, in-home child care, and public and nonpublic BESE-regulated schools which operate kindergarten, prekindergarten, and/or before and after school care programs. The parent or guardian will be afforded the freedom to select the child care provider of his choice.

B. Family day care home providers must verify that they are at least 18 years of age, provide verification of Social Security number and residence, and meet all registration requirements to be eligible for participation. Family day care home providers who provide child care only to children related to them need only apply for registration as family day care homes, but must meet registration requirements within one year.

C. In-home child care providers must verify that they are at least 18 years of age and provide verification of their Social Security number and residence to be eligible for participation.

D. Under no circumstances can the following be considered eligible child care providers:

1. members of the child's household; or
2. the child's parent or guardian, regardless of whether that individual lives with the child; or
3. Class B child care centers; or
4. persons who have been convicted of a felony or of an offense involving a juvenile victim or who reside with a person who has been convicted of such an offense.

E. Providers may be disqualified from further participation in the program if the department determines that a condition exists which threatens the physical or emotional health or safety of any child in care, as, for example, where a complaint of child abuse or neglect against a provider or other person with access to children in care has been validated by authorities.

Providers shall certify that neither they, nor any person employed by or residing with them, has been the subject of a validated complaint of child abuse or neglect; nor have they, or any person employed by or residing with them, been convicted of a felony or of any offense involving a juvenile victim. They shall further certify that they have requested a criminal background check from the Louisiana Office of State Police to verify this information, with respect to the provider and employees, and shall submit proof of having done so before being certified as an eligible provider.

F. A quality incentive will be paid to each child care provider who achieves and maintains National Association for the Education of Young Children (NAEYC) accreditation. The incentive will be paid once each calendar quarter, and will be equal to 10 percent of all payments received by that provider from the certificate portion of the Child Care and Development Block Grant for services provided during the prior calendar quarter.

G. Funds in the form of scholarships will be granted to those child care providers who demonstrate an intention to attain appropriate training in Early Childhood Development.

H. The Child Care Assistance Program will provide cash assistance to child care providers to pay for repairs and improvements that are necessary to comply with DSS licensing or registration requirements.

1. The program will pay for one-half of the cost of such a repair or improvement, up to the following maximums, which are based on the capacity of the child care provider:

Number of Children	Maximum Grant
Up to 20	\$ 500
21-40	\$1,000
41-60	\$1,500
61-80	\$2,000
81-100	\$2,500
101-120	\$3,000
Over 120	\$3,500

2. A provider can receive no more than one such grant in any state fiscal year. To apply, the provider must submit an application form, along with verification that the repair or improvement is needed to meet DSS licensing or registration requirements and two written estimates of the cost of the repair or improvement.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary and Office of Family Support, LR 24:

**§5109. Payment**

A. Each nonFITAP household shall contribute toward the payment of child care costs based on the size of the household and household income. The sliding fee scale is as follows:

Number in Household	8	9	10	DSS Percent	Client Percent
Monthly Household Income	0-2244	0-2470	0-2697	100%	0%
	2245-2695	2471-2887	2698-3079	90%	10%
	2696-3147	2888-3304	3080-3462	70%	30%
	3148-3598	3305-3721	3463-3844	50%	50%
	3599-4050	3722-4139	3845-4227	30%	70%
	Above 4050	Above 4139	Above 4227	0%	100%

**SLIDING FEE SCALE FOR CHILD CARE ASSISTANCE RECIPIENTS**

Number in Household	2	3	4	DSS Percent	Client Percent
Monthly Household Income	0-884	0-1110	0-1337	100%	0%
	885-1162	1111-1448	1338-1736	90%	10%
	1163-1440	1449-1787	1737-2136	70%	30%
	1441-1718	1788-2126	2137-2535	50%	50%
	1719-1996	2127-2465	2536-2935	30%	70%
	Above 1996	Above 2465	Above 2935	0%	100%

Number in Household	11	DSS Percent	Client Percent
Monthly Household Income	0-2924	100%	0%
	2925-3271	90%	10%
	3272-3619	70%	30%
	3620-3967	50%	50%
	3968-4315	30%	70%
	Above 4315	0%	100%

Number in Household	5	6	7	DSS Percent	Client Percent
Monthly Household Income	0-1564	0-1790	0-2017	100%	0%
	1565-2024	1791-2311	2018-2503	90%	10%
	2025-2484	2312-2832	2504-2989	70%	30%
	2485-2944	2833-3353	2990-3475	50%	50%
	2945-3405	3354-3874	3476-3962	30%	70%
	Above 3405	Above 3874	Above 3962	0%	100%

B. The number of hours authorized is based on the lesser of the number of hours the child is actually in care; or the number of hours the case head, that person's spouse or parent with the least number of hours of work, training, or school needs child care in order to work or attend a job training or educational program; plus allowable commuting time.

C. Payments are based on the number of hours, as determined in §5109.B, paid according to the provider's actual charges, up to the following Standard Maximum Rate Schedule:

**CENTER-BASED CARE**

	Regular Care	Special Needs Care
Full Day	\$13.00	\$16.25
Half Day	\$6.50	\$8.13
Quarter Day	\$3.25	\$4.06

**ALL OTHER CATEGORIES OF CARE  
UNDER AGE 1**

	<b>Regular Care</b>	<b>Special Needs Care</b>
Full Day	\$11.00	\$13.75
Half Day	\$5.50	\$6.88
Quarter Day	\$2.75	\$3.44

**AGE 1 AND OLDER**

	<b>Regular Care</b>	<b>Special Needs Care</b>
Full Day	\$10.00	\$12.50
Half Day	\$5.00	\$6.25
Quarter Day	\$2.50	\$3.13

D. The payment amount for each month is a percentage, as shown in §5109.A, multiplied by the number of authorized hours and the standard rate, as determined in §5109.B and C.

E. Payment, as calculated in §5109.D, is made on a monthly basis, following the month in which services are provided, to the eligible child care provider selected by the parent as defined in §5107.

F. Payment will not be made for more than 10 days of absence by a child in a month. Payment will not be made for an extended closure by a provider of more than five consecutive days in any calendar month.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary and Office of Family Support, LR 24:

Madlyn B. Bagneris  
Secretary

9801#048

**DECLARATION OF EMERGENCY**

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

Apprentice Fisherman License (LAC 76:VII.409)

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:303.8 adopts the rule set forth below. This emergency rule is necessary to implement the provisions of R.S. 56:303.8 enacted by Act 1413 of the 1997 Regular Session of the Louisiana Legislature. This Act became effective on July 15, 1997 and it is necessary to promulgate this rule as a declaration of emergency in order to expedite the mandate of this Act.

This declaration of emergency is effective January 8, 1998 and shall remain in effect for the maximum period allowed

under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 4. License and License Fees**

**§409. Apprentice Fisherman License**

A. Definitions

*Apprentice*—a real person who engages in the taking of finfish for a period of two years only with and aboard the vessel of a validly-licensed commercial fisherman who also holds a valid and appropriate permit/license issued by the department and who is engaged in the commercial taking of saltwater finfish by approved methods.

B. Application

1. At the time of application for an apprentice license, the applicant must provide a notarized affidavit, signed by both the applicant and the mentor, providing the Social Security Number, name, address and commercial fisherman's license number of his mentor and stating the intent to participate in the apprenticeship program.

2. The cost for the apprentice license shall be one half the cost of a commercial fisherman's license.

C. Seasons. A person who holds an apprentice license shall be aboard the vessel with and in the presence of his mentor while engaged in the taking of finfish under this "special apprentice license." The apprentice license shall authorize, under the same conditions as the regular license or permit, the commercial taking of saltwater finfish by the apprentice while in the presence of his mentor during the period for which it is valid. The special apprentice license shall be valid from January 1 through December 31. An apprentice license must be purchased prior to January 31 to qualify for one full year as an apprentice for the following license year.

D. Eligibility

1. Having held a valid apprentice license for two full years may substitute for the requirement of having held a gill net gear license in two of the years 1993, 1994 and 1995 when applying for a spotted seatrout permit, mullet permit, or rod and reel license. In addition to providing all commercial license application information, the applicant shall be required to show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species for the two years in which he held the apprentice license. Proof of such income shall be provided by the apprentice using one of the methods listed in the appropriate permit or license section that has been approved by the commission.

2. In addition to all other requirements, any applicant applying for a rod and reel license must provide a signed copy of his/her state income tax return for the years in which an apprentice license was held, or a notarized affidavit certifying that he/she was not required to file a state tax return.

3. The Socioeconomic Section of the Department of Wildlife and Fisheries, Office of Management and Finance, will review the submitted tax return information and determine if applicant meets the income eligibility requirement.



E. General Provision. Any person who previously held a commercial fisherman's license, or who has been convicted of a class three or greater violation, shall not be eligible to purchase an apprentice license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:303.8.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 24:

Daniel J. Babin  
Chairman

9801#032

## **DECLARATION OF EMERGENCY**

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

#### **Commercial Red Snapper Season**

The red snapper fishery in the Gulf of Mexico is cooperatively managed by the Department of Wildlife and Fisheries and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the United States, generally three miles offshore. Rules were recently established by NMFS to provide for commercial harvest seasons and limits for red snapper in the EEZ off of Louisiana, and NMFS and the Gulf Council requested that consistent regulations be established in Louisiana waters. NMFS and the Gulf Council typically request consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

The 1998 commercial red snapper fishery in EEZ waters will operate under two sets of seasonal openings, one beginning February 1 and one beginning September 1. During each season, the fishery will open at noon of the first day of each month and close at noon on the fifteenth day of each month, until the allotted portion of the commercial red snapper quota has been harvested. Two-thirds of the annual commercial quota has been allotted to the first set of seasonal openings that begins in February, and the remainder of the quota will be harvested under the second set of openings that begins in September. In order to adopt regulations in a timely manner so as to have compatible regulations in place in Louisiana waters for the 1998 commercial red snapper season, it is necessary that emergency rules be adopted.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act; R.S. 49:967 which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish season; and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby sets the following seasons for commercial harvest of red snapper in Louisiana state waters:

The season for the commercial fishery for red snapper in Louisiana state waters will open at 12 noon, February 1, 1998.

The commercial fishery for red snapper in Louisiana waters will close at 12 noon, February 15, 1998. The commercial season for red snapper harvest in Louisiana state waters will also reopen at 12 noon on March 1, 1998 and close at 12 noon on March 15, and thereafter open at 12 noon on the first of each month and close at 12 noon on the fifteenth of each month for each month of 1998, until two-thirds of the 1998 commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested.

The commission grants authority to the secretary of the Department of Wildlife and Fisheries to change the closing dates for the commercial red snapper season in Louisiana state waters when he is informed that two-thirds of the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested. Such closure order shall close the season until 12 noon September 1, 1998, which is the date set for the reopening of the 1998 commercial red snapper season in federal waters.

The season for the commercial fishery for red snapper in Louisiana state waters will reopen at 12 noon September 1, 1998. The commercial fishery for red snapper in Louisiana waters will close at 12 noon September 15, 1998. The commercial season for red snapper harvest in Louisiana state waters will also reopen at 12 noon on October 1, 1998 and close at 12 noon on October 15, and thereafter open at 12 noon on the first of each month and close at 12 noon on the fifteenth of each month for each month of 1998, until the remainder of the 1998 commercial quota is harvested.

The commission grants authority to the secretary of the Department of Wildlife and Fisheries to change the closing dates for the commercial red snapper season in Louisiana state waters when he is informed that the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested. Such closure order shall close the season until the date set for the opening of the 1999 commercial red snapper season in federal waters.

The commission also grants authority to the secretary of the Department of Wildlife and Fisheries to change the opening dates for the commercial red snapper season in Louisiana state waters if he is informed by the regional director of the National Marine Fisheries Service (NMFS) that the season dates for the commercial harvest of red snapper in the federal waters of the Gulf of Mexico as set out herein have been modified, and that the regional director of NMFS requests that the season be modified in Louisiana state waters.

Nothing herein shall preclude the legal harvest of red snapper by legally licensed recreational fishermen. Effective with any closure, no person shall commercially harvest, transport, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell red snapper. Effective with the closure, no person shall possess red snapper in excess of a daily bag limit, provided, however, that fish in excess of a daily bag limit which were legally taken prior to the closure may be purchased, possessed, transported, and sold by a licensed wholesale/retail seafood dealer or retail seafood dealers if appropriate records in accordance with R.S. 56:306.4 are properly maintained. Those other than wholesale/retail seafood dealers or retail seafood dealers may purchase such fish in excess of the daily bag limit from wholesale/retail

seafood dealers or retail seafood dealers for their own use or for sale by a restaurant as prepared fish.

Daniel J. Babin  
Chairman

9801#029

**DECLARATION OF EMERGENCY**

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

**Mullet Harvest—Proof of Income (LAC 76:VII.343)**

The Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, in accordance with the Administrative Procedure Act, R.S. 49:953(B), amends its mullet harvest rules, through emergency rule procedures.

Currently, under LAC 76, the only acceptable method an applicant can use to provide proof of income eligibility when applying for a mullet permit is a certified Internal Revenue Service (IRS) copy of his federal income tax return. Many fishermen are having difficulties in obtaining a certified copy of their federal tax returns and have received letters from the IRS stating that their returns are unavailable at this time. As a result of this, the commission has adopted additional acceptable alternative methods to prove income eligibility. These include: an IRS-stamped transcript, along with a copy of the applicant's income tax return; or a copy of the applicant's federal income tax return that has been filed at the local IRS and stamped "received." Both additional methods also require a signed IRS cover letter certifying that the information attached reflects or is a copy of the original federal tax return filed by the applicant.

A declaration of emergency is necessary, since the mullet season begins the third Monday of October, and there is insufficient time to adopt this change through the normal process of the Administrative Procedure Act.

This declaration of emergency is effective January 29, 1998 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery**

**§343. Harvest of Mullet**

\* \* \*

**E. Permits**

\* \* \*

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. 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;

b. 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:

i. 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 (e.g., Schedule C of Federal Form 1040, Form W-2, etc.), which has been certified by the Internal Revenue Service (IRS);

ii. 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 (e.g., 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;

iii. 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 (e.g., 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;

c. 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. 56:333(D)(1)(b);

d. the person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:325.1 and R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992), amended LR 21:37 (January 1995), LR 22:236 (March 1996), LR 24:

Daniel J. Babin  
Chairman

9801#027

**DECLARATION OF EMERGENCY**

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

**Reef Fish Daily Take and Size Limits  
(LAC 76:VII.335)**

The Wildlife and Fisheries Commission does hereby exercise the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to its authority under R.S. 56:6(25)(a), 56:326.1 and 56:326.3 adopts the rule set forth below. This emergency rule is necessary to expedite the enforceability and effectiveness of federal regulations on commercial reef fish fisheries for red snapper and greater amberjack, which became effective December 30, 1997, and require action before February 1, 1998 and March 1, 1998 respectively. It is therefore in the best interest of the state, and appropriate that these regulations be enacted concurrently, thereby requiring emergency action.

This emergency rule is effective January 8, 1998 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 3. Saltwater Sport and Commercial Fishery**

#### **§335. Daily Take, Possession and Size Limits Set by Commission, Reef Fish**

\* \* \*

E. All persons who do not possess a "Class 1" or "Class 2" red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit for red snapper. Those persons possessing a "Class 2" red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to a daily take and possession limit of 200 pounds of red snapper per vessel.

F. Those persons possessing a "Class 1" red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to a daily take and possession limit of 2,000 pounds of red snapper per vessel.

\* \* \*

J. The season for the commercial harvest of greater amberjack shall be closed during the months of March through May of each year. Possession of greater amberjack in excess of the daily bag limit while on the water is prohibited during the closed season. Any greater amberjack harvested during the closed season shall not be purchased, sold, traded, bartered or exchanged or attempted to be purchased, sold, traded, bartered or exchanged. The provisions of §335.J apply to fish taken within or without Louisiana's territorial waters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:326.1 and 326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 24:

Daniel J. Babin  
Chairman

9801#030

#### **DECLARATION OF EMERGENCY**

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

#### **Saltwater Commercial Rod and Reel License—Proof of Income (LAC 76:VII.405)**

The Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, in accordance with the Administrative

Procedure Act, R.S. 49:953(B), amends its saltwater commercial rod and reel license rules, through emergency rule procedures.

Currently, under LAC 76, the only acceptable method an applicant can use to provide proof of income eligibility when applying for a rod and reel license is a certified Internal Revenue Service (IRS) copy of his federal income tax return. Many fishermen are having difficulties in obtaining a certified copy of their federal tax returns and have received letters from the IRS stating that their returns are unavailable at this time. As a result of this, the commission has adopted additional acceptable alternative methods to prove income eligibility. These include: an IRS-stamped transcript, along with a copy of the applicant's income tax return or a copy of the applicant's federal income tax return that has been filed at the local IRS and stamped "Received." Both additional methods also require a signed IRS cover letter certifying that the information attached reflects, or is a copy of, the original federal tax return filed by the applicant. In addition, both methods require a copy of the applicant's state income tax return or a notarized affidavit by the applicant stating that he was not required to file a state return for that year.

A declaration of emergency is necessary, since the rod and reel is the only gear that can be used to commercially harvest spotted sea trout beginning on the third Monday of November, and there is insufficient time to adopt this change through the normal process of the Administrative Procedure Act.

This declaration of emergency is effective January 29, 1998 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

#### **Part VII. Fishing and Other Aquatic Life**

#### **Chapter 4. License and License Fees**

#### **§405. Saltwater Commercial Rod and Reel License; Proof of Income**

A. Each applicant shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the three years, 1995, 1994, and 1993.

B. Proof of such income for at least two of the three years 1995, 1994, and 1993 shall be provided by the applicant, using any of the methods listed below:

1. 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 (e.g., Schedule C of Federal Form 1040, Form W-2, etc.), which has been certified by the Internal Revenue Service (IRS) and a copy of his state tax return, provided applicant was required to file.

2. 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 (e.g., 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 and a copy of his state tax return, provided applicant was required to file.

3. 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 (e.g., Schedule C of Federal Form 1040, Form W-2, etc.) along with an IRS-stamped transcript and IRS-signed cover letter and a copy of his state tax return, provided applicant was required to file. Transcripts are available at local IRS offices.

C. 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. 56:305B(14)(b).

D. If the applicant was not required to file a state tax return, the applicant shall provide a notarized affidavit certifying that he was not required to file a state tax return.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:13.1.D.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22:237 (March 1996), amended LR 24:

Daniel J. Babin  
Chairman

9801#028

## DECLARATION OF EMERGENCY

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

#### Shrimp Season—Zone 1

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 967, and in accordance with R.S. 56:497(A)(9), which allows the Wildlife and Fisheries Commission to delegate authority to the secretary of the department to set seasons, and in accordance with the resolution adopted by the Wildlife and Fisheries Commission at its August 7, 1997 meeting, which granted authority to the secretary of the department to change the closing date of the 1997 Fall Inshore Shrimp Season, notice is hereby given that the secretary of the Department of Wildlife and Fisheries declares:

1. The 1997 Fall Inshore Shrimp Season will close statewide at sunset on December 14, 1997, except for that portion of Zone 1 extending north of the south shore of the Mississippi River Gulf Outlet, including Lake Pontchartrain, which shall close at official sunset, December 21, 1997.

2. Additionally, Breton and Chandeleur Sounds, as described in R.S. 56:495.1(A)(2), shall remain open until 6 a.m., April 1, 1998.

James H. Jenkins, Jr.  
Secretary

9801#004

## DECLARATION OF EMERGENCY

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

#### Spotted Seatrout Management Measures—Proof of Income (LAC 76:VII.341)

The Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, in accordance with the Administrative Procedure Act, R.S. 49:953(B), amends its Spotted Seatrout Management Rules, through emergency rule procedures.

Currently, under LAC 76, the only acceptable method an applicant can use to provide proof of income eligibility when applying for a spotted seatrout permit is a certified Internal Revenue Service (IRS) copy of his federal income tax return. Many fishermen are having difficulties in obtaining a certified copy of their federal tax returns and have received letters from the IRS stating that their returns are unavailable at this time. As a result of this, the commission has adopted additional acceptable alternative methods to prove income eligibility. These include an IRS-stamped transcript, along with a copy of the applicant's income tax return; or a copy of the applicant's federal income tax return that has been filed at the local IRS office and stamped "Received." Both additional methods also require a signed IRS cover letter certifying that the information attached reflects, or is a copy of, the original federal tax return filed by the applicant.

A declaration of emergency is necessary, since the spotted seatrout season is scheduled to begin the third Monday of November, and there is insufficient time to adopt this change through the normal process of the Administrative Procedure Act.

This declaration of emergency is effective January 29, 1998 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 3. Saltwater Sport and Commercial Fishery

#### §341. Spotted Seatrout Management Measures

##### A. Commercial Season; Quota; Permits

\* \* \*

##### 4. Permits

\* \* \*

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 (e.g., 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 (e.g., 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 (e.g., 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. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take spotted seatrout and shall be forever barred from receiving any permit or license to commercially take spotted seatrout.

5. Each spotted seatrout permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of spotted seatrout taken commercially during the preceding month and the commercial dealers to whom these were sold, if sold. Monthly reports shall be filed even if catch or effort is zero.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a); 56:325.3; and 56:326.3.

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:

Daniel J. Babin  
Chairman

9801#026

# Rules

## RULE

### Department of Economic Development Board of Architectural Examiners

Limited Liability Company (LAC 46:I.1335)

Under the authority of R.S. 37:144 and in accordance with the provisions of R.S. 49:950 et seq., the Board of Architectural Examiners amended LAC 46:I.1335 pertaining to the name of a limited liability company practicing architecture. The amended rule provides that the name of a limited liability company practicing architecture shall contain the words "limited liability company"; the abbreviation "L.L.C."; or the abbreviation "L.C."

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part I. Architects

#### Chapter 13. Titles, Firm Names, and Assumed Names

##### §1335. Limited Liability Company

The name of a limited liability company must comply with R.S. 12:1306 and shall include the words "limited liability company"; the abbreviation "L.L.C."; or the abbreviation "L.C."

Allowed	Not Allowed
Smith and Jones, Architects, A Limited Liability Company	Smith and Jones, Architects (if the entity is a limited liability company)
Smith and Jones, Architects, L.L.C.	
Smith and Jones, Architects, L.C.	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:145-146.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Architectural Examiners, LR 20:996 (September 1994), amended LR 24:18 (January 1998).

Mary "Teeny" Simmons  
Executive Director

9801#002

## RULE

### Department of Economic Development Board of Architectural Examiners

Prepared Documents (LAC 46:I.1115)

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 amended LAC 46:I.1115 pertaining

to when specifications, drawings, or other related documents will be deemed to have been prepared either by the architect or under the architect's responsible supervision, as required by R.S. 37:152(B). The board clarified the existing rule and provided that if the documents are prepared outside the architect's office then the architect shall maintain all evidence of the architect's responsible control; otherwise, the architect shall be considered to be in violation of the architects' licensing law and subject to disciplinary penalties.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part I. Architects

#### Chapter 11. Administration

##### §1115. Interpretation of R.S. 37:152(B)

Specifications, drawings, or other related documents will be deemed to have been prepared either by the architect or under the architect's responsible supervision only when:

1. the client requesting preparation of such plans, specifications, drawings, reports or other documents makes the request directly to the architect, or the architect's employee as long as the employee works in the architect's office;
2. the architect personally controls the preparation of the plans, specifications, drawings, reports or other documents and has input into their preparation prior to their completion;
3. if the plans, specifications, drawings, reports, or other such documents are prepared outside the architect's office, the architect shall maintain all evidence of the architect's responsible control including correspondence, time records, check prints, telephone logs, site visit logs, research done for the project, calculations, changes, and all written agreements with any persons preparing the documents outside of the architect's offices accepting professional responsibility for such work;
4. the architect reviews the final plans, specifications, drawings, reports or other documents; and
5. the architect has the authority to, and does, make any necessary and appropriate changes to the final plans, specifications, drawings, reports or other documents. If an architect fails to maintain written documentation of the items set forth above, when such are applicable, then the architect shall be considered to be in violation of R.S. 37:152, and the architect shall be subject to the disciplinary penalties provided in R.S. 37:153.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Architectural Examiners, LR 17:575 (June 1991), amended LR 24:18 (January 1998).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Architectural Examiners, LR 17:575 (June 1991), amended LR 24:18 (January 1998).

Mary "Teeny" Simmons  
Executive Director

9801#003

## RULE

### Department of Economic Development Real Estate Commission

#### Agency Disclosure (LAC 46:LXVII.3401-3411)

Under the authority of the Real Estate License Law, R.S. 37:1435, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 37:1437, and R.S. 9:3891 et seq., Agency Relations in Real Estate Transactions, the Real Estate Commission has amended LAC 46:LXVII.Chapter 34. LAC 46:LXVII.3401 is revised to reflect the statute under which agency relations in real estate transactions are now governed. LAC 46:LXVII.3403 and 3405 are revised to establish guidelines for reproduction and distribution of the agency disclosure informational pamphlet and the dual agency disclosure form the usage of which was made mandatory by Act 32 (R.S. 37:1455.A.21 and R.S. 37:1467) of the 1997 Regular Session. LAC 46:LXVII.3407-3411 is repealed.

The amendments will become effective March 1, 1998, in accordance with Chapter 4 of Code XV of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:3891-3899.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXVII. Real Estate

##### Subpart 1. Real Estate

#### Chapter 34. Agency Disclosure

##### §3401. Agency Relationships in Real Estate Transactions

Effective March 1, 1998, agency relations in real estate transactions will be governed by Chapter 4 of Code XV of Title 9 of the Revised Statutes of 1950, comprised of R.S. 9:3891-3899.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 18:26 (January 1992), amended LR 19:1129 (September 1993), LR 24:19 (January 1998).

##### §3403. Agency Disclosure Informational Pamphlet

A. Licensees shall provide the agency disclosure informational pamphlet to all parties to a real estate transaction involving the sale or lease of real property.

B. The agency disclosure informational pamphlet shall be obtained from the commission in a form suitable for use by licensees in reproducing the pamphlet locally. Licensees are responsible for insuring that the pamphlets prepared and distributed are the most current version prescribed by the commission and contain the identical language prescribed by the commission.

C. Licensees will provide the agency disclosure informational pamphlet to prospective sellers/lessors and buyers/lessees at the time of the first face-to-face contact with the sellers/lessors or buyers/lessees when performing any real estate related activity involving the sale or lease of real

property, other than a ministerial act as defined in R.S. 9:3891(12).

D. Licensees providing agency disclosure informational pamphlets to prospective sellers/lessors and buyers/lessees shall insure that the recipient of the pamphlet signs and dates the receipt included in the pamphlet. The licensee providing the pamphlet will affix his/her signature to the receipt as a witness to the signature of the recipient, and the licensee will retain the signed receipt for a period of five years.

E. In any circumstance in which a seller/lessor or a buyer/lessee refuses to sign the receipt included in the agency disclosure informational pamphlet, the licensee shall prepare written documentation to include the nature of the proposed real estate transaction, the time and date the pamphlet was provided to the seller/lessor or buyer/lessee, and the reasons given by the seller/lessor or buyer/lessee for not signing the receipt. This documentation will be retained by the licensee for a period of five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 18:26 (January 1992), amended LR 19:1129 (September 1993), LR 24:19 (January 1998).

##### §3405. Dual Agency Disclosure

A. The dual agency disclosure form will be used by licensees acting as a dual agent under R.S. 9:3897.

B. The dual agency disclosure form shall be obtained from the commission in a form suitable for use by licensees in reproducing the form locally. Licensees are responsible for insuring that the form is the most current version prescribed by the commission and that reproductions of the form contain the identical language prescribed by the commission.

C. Licensees shall insure that the dual agency disclosure form is signed by all clients at the time the brokerage agreement is entered into or at any time before the licensee acts as a dual agent; but in no event later than when a purchase agreement is entered into by the clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 18:26 (January 1992), amended LR 19:1129 (September 1993), LR 24:19 (January 1998).

##### §3407. Seller/Lessor Agency Disclosure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 18:26 (January 1992), amended LR 19:1129 (September 1993), repealed LR 24:19 (January 1998).

##### §3409. Buyer/Lessee Agency Disclosure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 18:26 (January 1992), amended LR 19:1129 (September 1993), repealed LR 24:19 (January 1998).

**§3411. Dual Agent/Agency Disclosure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 18:26 (January 1992), amended LR 19:1129 (September 1993), repealed LR 24:20 (January 1998).

Julius C. Willie  
Executive Director

9801#034

**RULE**

**Department of Environmental Quality  
Office of Air Quality and Radiation Protection  
Air Quality Division**

**Control of Emission of Organic Compounds  
(LAC 33:III.Chapter 21) (AQ149)**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division Regulations, LAC 33:III.Chapter 21 (AQ149).

This rule revised parts of Chapter 21 to provide clarification where language may have resulted in misinterpretation of the Regulation. Because of recent and anticipated changes in area designation status in some parishes from nonattainment to attainment for ozone, clarification by parish (unless applicable statewide) of regulatory applicability was added. Compounds exempted from VOC definition were updated, as allowed by recent EPA rulemaking, to exempt HFC 43-10MEE and HCFC 225CA and CB. These compounds are solvents which could be used in electronics and precision cleaning, and are exempt on the basis that these compounds have negligible contribution to tropospheric ozone formation. Miscellaneous errors or ambiguity identified by various sources were clarified and corrected throughout Chapter 21.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3), therefore, no report regarding environmental/health benefits and social/economic costs is required.

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

**Chapter 21. Control of Emission of Organic  
Compounds**

**Subchapter A. General**

**§2103. Storage of Volatile Organic Compounds**

\* \* \*

[See Prior Text in A-H.2.e]

3. Vapor Pressure. The maximum true vapor pressure is determined based upon the highest expected calendar-month average of the storage temperature. The true vapor pressure shall be determined from one of the following methods:

- a. from available data on the Reid vapor pressure;

b. by ASTM Test Method D323 for the measurement of Reid vapor pressure, and adjusted for actual storage temperature using the nomographs contained in API Bulletin 2517;

- c. from standard reference texts;
- d. determined by ASTM Test Method D2879; or
- e. by another method approved by the administrative authority\*.

\* \* \*

[See Prior Text in I-I.5]

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 15:1065 (December 1989), repromulgated LR 16:27 (January 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:360 (April 1991), LR 18:1121 (October 1992), LR 20:1376 (December 1994), LR 21:1223 (November 1995), repromulgated LR 21:1333 (December 1995), amended LR 22:453 (June 1996), LR 22:1212 (December 1996), LR 24:20 (January 1998).

**§2107. Volatile Organic Compounds—Loading**

\* \* \*

[See Prior Text in A-E.2]

3. Vapor processing systems that use a combustion device designed and operated for 90 percent destruction efficiency to destroy collected VOCs will be exempt from testing.

\* \* \*

[See Prior Text in F]

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 16:116 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:360 (April 1991), LR 22:1212 (December 1996), LR 24:20 (January 1998).

**§2108. Marine Vapor Recovery**

A. Applicability. An affected facility is any marine loading operation serving ships and/or barges loading crude oil, gasoline, or volatile organic compounds (VOCs) with an uncontrolled emission of 100 tons per year (TPY) or greater of volatile organic compounds. Emissions from VOCs with a true vapor pressure of less than 1.5 psia at the loading temperature of the liquid are exempt from the control requirements of this Section.

\* \* \*

[See Prior Text in B-C.1]

2. Affected facilities shall collect and process the vapors by a recovery and/or destruction system such that uncontrolled emissions are reduced by at least 90 percent by weight.

3. Unless exempted under Subsection A of this Section, affected facilities' emissions to the atmosphere caused by the loading of crude oil, gasoline, or volatile organic compounds into ships and/or barges are not to exceed the following:

\* \* \*

[See Prior Text in C.3.a-H.2]

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



HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 14:704 (October 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:959 (November 1990), LR 22:1212 (December 1996), LR 23:1678 (December 1997), LR 24:20 (January 1998).

**§2115. Waste Gas Disposal**

Any waste gas stream containing volatile organic compounds (VOC) from any emission source shall be controlled by one or more of the applicable methods set forth in Subsections A-G of this Section. This Section shall apply to all waste gas streams located at facilities that have the potential to emit 50 TPY or more of volatile organic compounds in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, or 100 TPY in any other parish. This Section does not apply to waste gas streams that must comply with a control requirement, meet an exemption, or are below an applicability threshold specified in another section of this Chapter. This Section does not apply to waste gas streams that are required by another federal or state regulation to implement controls that reduce VOCs to a more stringent standard than would be required by this Section.

A. Control Requirements for Operations that Commenced Construction Prior to January 20, 1985. Nonhalogenated hydrocarbons shall be burned at 1300EF (704EC) for 0.3 second or greater in a direct-flame afterburner or an equally effective device which achieves a removal efficiency of 95 percent or greater, as determined in accordance with Subsection J.1 of this Section, or if emissions are reduced to 50 ppm by volume, whichever is less stringent.

B. Control Requirements for Operations that Commenced Construction On or After January 20, 1985. Nonhalogenated hydrocarbons shall be burned at 1600EF (870EC) for 0.5 second or greater in a direct-flame afterburner or thermal incinerator. Other devices will be accepted provided 98 percent or greater VOC destruction or removal efficiency can be demonstrated, as determined in accordance with Subsection J.1 of this Section, or if emissions are reduced to 20 ppm by volume, whichever is less stringent.

C. Control Requirements for Existing Polypropylene Plants Using Liquid Phase Processes. All waste gas streams containing VOCs at the following sources in existing polypropylene plants using liquid phase processes shall be controlled as specified in Subsection B of this Section:

\* \* \*

[See Prior Text in C.1-C.3]

D. Control Requirements for Existing High-Density Polyethylene Plants Using Liquid Phase Slurry Processes. All waste gas streams containing VOCs at the following sources in existing high-density polyethylene plants using liquid phase slurry processes shall be controlled as specified in Subsection B of this Section:

\* \* \*

[See Prior Text in D.1-D.2]

E. Control Requirements for Polystyrene Plants Using Continuous Processes. The emissions from the material recovery section (e.g., product devolatilizer system) shall be limited to 0.12 kg VOC/1,000 kg of product.

F. Control Requirements for Halogenated Hydrocarbons. The halogenated hydrocarbons shall be combusted or controlled by other methods specified in Subsection G of this Section that achieve a removal efficiency of 95 percent or greater, as determined in accordance with Subsection J.1 of this Section. If combusted, the halogenated products of combustion shall be reduced to an emission level acceptable to the administrative authority.

G. Alternative Control Requirements. Other methods of control (such as, but not limited to, carbon adsorption, refrigeration, catalytic and/or thermal reaction, secondary steam stripping, recycling, or vapor recovery system) may be substituted for burning provided the substitute is acceptable to the administrative authority\* and it achieves the same removal efficiency as required by this Section and determined in accordance with Subsection J.1 of this Section or it achieves a degree of control not practically or safely achieved by other means.

H. Exemptions

1. All waste gas streams containing VOCs, except those subject to Subsections C, D, and E of this Section, are exempt from the requirements of this Section if any of the following conditions are met:

a. it can be demonstrated that the waste gas stream is not a part of a facility that emits, or has the potential to emit, 50 TPY or more of volatile organic compounds in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, or 100 TPY in any other parish;

b. it is a waste gas stream from a low-density polyethylene plant and no more than 1.1 pounds of ethylene per 1,000 pounds (1.1 kg/1000 kg) of product are emitted from all the waste gas streams associated with the formation, handling, and storage of solidified product;

c. it is a waste gas stream having a combined weight of VOCs equal to or less than 100 pounds (45.4 kg) in any continuous 24-hour period; or

d. it is a waste gas stream with a concentration of VOCs less than 0.44 psia true partial pressure (30,000 ppm) except for the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, St. James, and West Baton Rouge in which the concentration of VOCs in the waste gas stream must be less than 0.044 psia true partial pressure (3,000 ppm).

2. Except for waste gas streams subject to Subsections C, D, and E of this Section, the administrative authority\* may waive the requirements of this Section if one of the following conditions is met:

\* \* \*

[See Prior Text in H.2.a-H.2.b]

3. Waste gas streams subject to Subsections C, D, and E of this Section are exempt from the requirements of this Section if it can be demonstrated that the waste gas stream has a concentration of VOCs no greater than 408 ppm by volume.

[NOTE: Paragraphs 4 and 5 are being deleted at this time to clarify confusion regarding the asterisks as printed in AQ68 published as a final Rule in March 1993.]

\* \* \*

[See Prior Text in I-K.3]

4. records to demonstrate that the criteria are being met for any exemption claimed.

L. This Section does not apply to safety relief and vapor blowdown systems where control cannot be accomplished because of safety or economic considerations. However, the emissions from these systems shall be reported to the department as required under LAC 33:III.918. Emergency occurrences shall be reported under LAC 33:III.927.

M. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Section shall have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply:

*Safety Relief and Vapor Blowdown Systems*—the emergency escape of gas from a process unit through a valve or other mechanical device, in order to eliminate system overpressure or in the case of an operational emergency.

*Waste Gas Stream*—any gas stream, excluding fugitive emissions as defined in LAC 33:III.Chapter 5, containing VOC and discharged from a processing facility directly to the atmosphere or indirectly to the atmosphere after diversion through other process equipment. Process gaseous streams that are used as primary fuels are excluded. The streams that transfer such fuels to a plant fuel gas system are not considered to be waste gas.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:960 (November 1990), LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 19:317 (March 1993), LR 22:1212 (December 1996), LR 24:21 (January 1998).

#### §2117. Exemptions

The following compounds are considered exempt from the control requirements of this Chapter: methane; ethane; 1, 1, 1 trichloroethane (methyl chloroform); methylene chloride (dichloromethane); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; parachlorobenzotrifluoride (PCBTF); perchloroethylene (tetrachloroethylene); cyclic, branched, or linear completely methylated siloxanes; 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC)-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-entafluoropropane (HFC-245fa); 1,1,1,2,3,3-

hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); 1-ethoxy-1,1,2,2,3,3,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>); and 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>). The following classes of perfluorocarbons are also considered exempt from the control requirements of this Chapter: cyclic, branched, or linear, completely fluorinated alkanes; cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

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 16:118 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:289 (March 1994), LR 21:681 (July 1995), LR 21:1330 (December 1995), repromulgated LR 22:14 (January 1996), amended LR 22:703 (August 1996), LR 23:1661 (December 1997), LR 24:22 (January 1998).

#### §2121. Fugitive Emission Control

\* \* \*

[See Prior Text in A-C.4.h]

i. pumps and compressors that are sealless or have a double mechanical seal;

\* \* \*

[See Prior Text in C.4.j-G.Liquid Service]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:959 (November 1990), LR 17:654 (July 1991), LR 21:1330 (December 1995), LR 22:1128 (November 1996), LR 22:1212 (December 1996), LR 24:22 (January 1998).

#### §2122. Fugitive Emission Control for Ozone Nonattainment Areas

\* \* \*

[See Prior Text in A-D.4.g]

h. pumps and compressors that are sealless or have a double mechanical seal;

\* \* \*

[See Prior Text in D.4.i-G.6]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:1102 (October 1994), repromulgated LR 20:1279 (November 1994), amended LR 22:1129 (November 1996), LR 22:1212 (December 1996), repromulgated LR 23:197 (February 1997), amended LR 23:1678 (December 1997), LR 24:22 (January 1998).

**Subchapter B. Organic Solvents**

**§2123. Organic Solvents**

\* \* \*

[See Prior Text in A-B.1.c]

2. Whenever any organic solvent or any constituent of an organic solvent may be classified from its chemical structure into more than one of the above groups of organic compounds, it shall be considered as a member of the most reactive chemical group, that is, that group having the least allowable percent of the total volume of solvents.

C. Surface Coating Industries. No person may cause, suffer, allow, or permit volatile organic compound (VOC) emissions from the surface coating of any materials affected by this Subsection to exceed the emission limits as specified in this Section.

Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Lbs. Per Gal. of Coating as applied (minus water and exempt solvent)	Kgs. Per Liter of Coating as applied (minus water and exempt solvent)
1. Large Appliance Coating Industry. The following emission limits shall apply: Prime, single, or topcoat application area, flashoff area and oven	2.8	0.34
2. Surface Coating of Cans. The following emission limits shall apply: Sheet Basecoat (exterior and interior) and over-varnish: Two-piece can exterior (basecoat and over-varnish)	2.8	0.34
Two and three-piece can interior body spray, two-piece can exterior end (spray or roll coat)	4.2	0.51
Three-piece can side-seam spray	5.5	0.66
End sealing compound	3.7	0.44
3. Surface Coating of Coils. The following emission limits shall apply: Prime and topcoat or single coat operation	2.6	0.31
4. Surface Coating of Paper. The following emission limits shall apply: Coating Line	2.9	0.35
5. Surface Coating of Fabrics. The following emission limits shall apply: Fabric Facility	2.9	0.35
Vinyl Coating Line (except Plasticol coatings)	3.8	0.45

6. Surface Coating of Assembly Line Automobiles and Light Duty Trucks. The following emission limits shall apply: Prime application, flashoff area and oven (determined on a monthly basis)	1.2	0.14
Primer surface application flashoff area and oven	2.8	0.34
Topcoat application, flashoff area and oven	2.8	0.34
Final repair application, flashoff area and oven	4.8	0.58
As an alternative to the emission limitation of 2.8 pounds of VOC per gallon of coating applied for the primer surfacer and/or topcoat application, compliance with these emission limitations may be demonstrated by meeting a standard of 15.1 pounds of VOC per gallon of solids deposited.		
7. Surface coating-magnet wire coating. The following emission limits shall apply: Coating Line	1.7	0.20
8. Surface Coating of Metal Furniture. Volatile organic compound emissions from metal furniture coating lines shall not exceed three pounds per gallon (0.36 kg/liter) of coating (minus water and exempt solvent).		
9. Surface Coating of Miscellaneous Metal Parts and Products. The following emission limits shall apply: Clear Coat	4.3	0.52
Air or force air dried items (not oven dried)	3.5	0.42
Frequent color change and/or large numbers of colors applied, or first coat on untreated ferrous substrate	3.0	0.36
Outdoor or harsh exposure or extreme performance characteristics	3.5	0.42
No or infrequent color change, or small number of colors applied	0.4	0.05
a. Powder Coating		
b. Other	3.0	0.36
These limits do not apply to operations covered in 1-8 or 11 herein or exterior coating of fully assembled aircraft, auto refinishing, and auto customizing topcoating (processing less than 35 vehicles per day).		
10. Factory Surface Coating of Flat Wood Paneling. The following emission items shall apply:	VOC Emission Limitation	
	Lbs/1000 sq. ft. of Coated Surface	Kgs/100 sq. meter of Coated Surface
Printed interior wall panels made of hardwood plywood and thin particleboard	6.0	2.9

Natural finish hardwood plywood panels	12.0	5.8
Class II finishes for hardboard paneling	10.0	4.8
11. Surface Coating for Marine Vessels and Oilfield Tubulars and Ancillary Oilfield Equipment.		
a. Except as otherwise provided in this Rule, a person shall not apply a marine coating with a VOC content in excess of the following limits:		
Baked Coatings	3.5	0.42
Air-Dried Single-Component Alkyd or Vinyl Flat or Semi Gloss Finish Coatings	3.5	0.42
Two Component Coatings	3.5	0.42
b. Except for the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, in which the VOC limitations in Subsection C.11.a of this Section may not be exceeded, specialty marine coatings and coatings on oilfield tubulars and ancillary oilfield equipment with a VOC content not in excess of the following limits may be applied:		
Heat Resistant	3.5	0.42
Metallic Heat Resistant	4.42	0.53
High Temperature (Fed. Spec. TT-P-28)	5.41	0.65
Pre-Treatment Wash Primer	6.5	0.78
Underwater Weapon	3.5	0.42
Elastomeric Adhesives With 15 percent Weight Natural or Synthetic Rubber	6.08	0.73
Solvent-Based Inorganic Zinc Primer	5.41	0.65
Pre-Construction and Interior Primer	3.5	0.42
Exterior Epoxy Primer	3.5	0.42
Navigational Aids	3.5	0.42
Sealant for Wire-Sprayed Aluminum	5.4	0.648
Special Marking	4.08	0.49
Tack Coat (Epoxy)	5.08	0.61
Low Activation Interior Coating	4.08	0.49
Repair and Maintenance Thermoplastic	5.41	0.65
Extreme High Gloss Coating	4.08	0.49
Antenna Coating	4.42	0.53
Antifoulant	3.66	0.44
High Gloss Alkyd	3.5	0.42

Anchor Chain Asphalt Varnish (Fed. Spec. TT-V-51)	5.2	0.62
Wood Spar Varnish (Fed. Spec. TT-V-119)	4.1	0.492
Dull Black Finish Coating (DOD-P-15146)	3.7	0.444
Tank Coatings (DOD-P-23236)	3.5	0.42
Potable Water Tank Coating (DOD-P-23236)	3.7	0.444
Flight Deck Markings (DOD-C-24667)	4.2	0.504
Vinyl Acrylic Top Coats	5.4	0.648
Antifoulant Applied to Aluminum Hulls	4.5	0.55

\* \* \*

[See Prior Text in D-F.4]

### G. Definitions

*Air Dried Coating*—any coating that is cured at a temperature below 90EC (194EF).

*Baked Coating*—any coating that is cured at a temperature at or above 90EC (194EF).

*Extreme High Gloss Coating*—any coating that achieves at least 95 percent reflectance on a 60E meter when tested by ASTM Method D-523.

*Heat Resistant Coating*—any coating that during normal use must withstand temperatures of at least 204EC (400EF).

*High Gloss Coating*—any coating that achieves at least 85 percent reflectance on a 60E meter when tested by ASTM Method D-523.

*High Temperature Coating*—any coating that must withstand temperatures of at least 426EC (800EF).

*Marine Coating*—any coating, except unsaturated polyester resin (fiberglass) coatings, containing volatile organic materials and applied by brush, spray, roller, or other means to ships, boats and their appurtenances, and to buoys and oil drilling rigs intended for the marine environment.

*Metallic Heat Resistant Coating*—any coating which contains more than five grams of metal particles per liter as applied and which must withstand temperatures over 80EC (175EF).

*Repair and Maintenance Thermoplastic Coating*—a resin-bearing coating in which the resin becomes pliable with the application of heat, such as vinyl, chlorinated rubber, or bituminous coatings.

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 16:119 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 22:340 (May 1996), LR 22:1212 (December 1996), LR 23:1678 (December 1997), LR 24:23 (January 1998).

**Subchapter F. Gasoline Handling**

**§2132. Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities**

\* \* \*

[See Prior Text in A-A. Stage II Vapor Recovery System]

**B. Applicability**

1. The provisions of this Section shall apply to motor vehicle fuel dispensing facilities in the affected parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge.

\* \* \*

[See Prior Text in B.2-I]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:1254 (November 1992), repromulgated LR 19:46 (January 1993), amended LR 23:1682 (December 1997), LR 24:25 (January 1998).

**§2135. Bulk Gasoline Terminals**

A. Areas Affected. All facilities in Ascension, Beauregard, Bossier, Caddo, Calcasieu, East Baton Rouge, Grant, Iberville, Livingston, Jefferson, Lafayette, Lafourche, Orleans, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, and West Baton Rouge parishes shall be in compliance with this Section.

\* \* \*

[See Prior Text in B-E.5.c]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:611 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 18:1123 (October 1992), LR 22:1212 (December 1996), LR 24:25 (January 1998).

**Subchapter H. Graphic Arts**

**§2143. Graphic Arts (Printing) by Rotogravure and Flexographic Processes**

A. Control Requirements. No person shall operate or allow the operation of a packaging rotogravure, publication rotogravure, or flexographic printing facility having a potential to emit 50 TPY or more of VOCs in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge or having a potential to emit 100 TPY or more of VOCs in any other parish, unless volatile organic compound emissions are controlled by one of the methods in Subsection A.1-5 of this Section. Once a facility is subject to the provisions of this Section, it remains so regardless of future variations in production.

\* \* \*

[See Prior Text in A.1-5]

B. Applicability Exemption. A rotogravure or flexographic printing facility which has a potential to emit on an uncontrolled basis at full production (8760 hours per year basis) a combined weight of volatile organic compounds less than 50 TPY calculated from historical records of actual consumption of ink is exempt from the provisions of Subsection A of this Section.

\* \* \*

[See Prior Text in C-D.3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:964 (November 1990), LR 18:1123 (October 1992), LR 22:1212 (December 1996), LR 24:25 (January 1998).

**Subchapter I. Pharmaceutical Manufacturing Facilities**

**§2145. Pharmaceutical Manufacturing Facilities**

\* \* \*

[See Prior Text in A-F.3]

4. Test Method 25 40 CFR part 60, appendix A, (as incorporated by reference at LAC 33:III.3003) for determining total gaseous nonmethane organic emissions as carbon.

\* \* \*

[See Prior Text in G-G.4]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:964 (November 1990), LR 22:1212 (December 1996), LR 24:25 (January 1998).

**Subchapter L. Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing**

**§2151. Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing**

A. Applicability. The provisions of this Subchapter apply to stationary sources that emit, or have the potential to emit, 50 TPY or more of volatile organic compounds and conduct one or more of the affected cleaning operations in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge. Once a source is subject to this Subchapter, it shall be so, ad infinitum. Affected cleaning operations are ones that use solvents in the following operations:

\* \* \*

[See Prior Text in A.1-9]

B. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Subchapter shall have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise.

\* \* \*

[See Prior Text]

*Cleaning of Removable Parts*—solvent engulfs the entire surface of the part as it is dipped into a container of solvent or the part is cleaned above the container by a cleaning activity such as spraying or wiping. Equipment or the unit operation where this might take place includes part washers, batch-loaded cold cleaners, ultrasonic cleaners, and spray gun washers.

\* \* \*

[See Prior Text]

*Closed-Loop Recycling (In-Process Recycling)*—reuse or recirculation of a chemical material within the boundaries used

o develop a material balance around a unit operation system. A recovery or regeneration (R and R) unit operation may be within the boundaries selected for the primary unit operation system if it is:

- a. solely dedicated. The chemical is reused only for cleaning the primary unit operation; or
- b. physically integrated. The R and R unit operation is connected to the primary unit operation by means of piping, so that it is not possible to perform the material balance around the primary unit operation system without including it.

\* \* \*

[See Prior Text]

C. Control Requirements. Sources specified in Subsection A of this Section shall implement the following actions, per EPA publication number EPA-453/R-94-015, February 1994:

\* \* \*

[See Prior Text in C.1]

- 2. utilize accounting on a unit operation system; and
- 3. submit plans to the administrative authority, to reduce VOC emissions from solvent usage, within 12 months after promulgation of these Regulations. Any increases in VOC emissions due to the substitution of a nonhazardous air pollutant for a hazardous one shall require approval of the administrative authority\*. To satisfy all requirements of this Subsection, the owner or operator of an affected facility may alternatively report the controls and/or work practices deemed to be MACT that have been adopted to reduce VOC emissions from solvent cleanup operations. These plans or submissions become enforceable upon approval.

D. Testing. ASTM Method D-4828, "Standard Test Method for Practical Washability of Organic Coatings", is a method adaptable for comparing the cleaning effectiveness of solvents and other cleaners. Minor modifications of this method may be approved by the administrative authority. Alternative methods may be approved only by the administrator.

E. Monitoring, Reporting, and Recordkeeping. Reporting and recordkeeping shall be used to monitor VOC emissions from solvent use for cleanup purposes. Affected facilities shall calculate and record the net VOC emissions from usage of solvents monthly and report the net VOC emissions from solvent usage annually. In addition, solvent reduction progress shall be reported annually, based on product output or other suitable basis approved by the administrative authority\*. To satisfy all requirements of this Subsection, the owner or operator of an affected facility may alternatively report the controls and/or work practices deemed to be MACT that have been adopted to reduce VOC emissions from solvent cleanup operations.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:391 (April 1995), amended LR 24:25 (January 1998).

## Subchapter M. Limiting Volatile Organic Compound Emissions From Industrial Wastewater

### §2153. Limiting Volatile Organic Compound Emissions from Industrial Wastewater

A. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Chapter shall have the meanings normally used in the field of air pollution control. Additionally the following meanings apply, unless the context clearly indicates otherwise.

*Affected Source Category*—any facilities of the following source categories located in Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge parishes and having the potential to emit 50 TPY or more of VOCs:

- a. organic chemicals, plastics, and synthetic fibers manufacturing industry under Standard Industrial Classification (SIC) codes 2821, 2823, 2824, 2865, and 2869;
- b. pesticides manufacturing industry under SIC code 2879;
- c. pharmaceutical manufacturing industry under SIC codes 2833, 2834, and 2836; and
- d. hazardous waste treatment, storage, and disposal facilities industry under SIC codes 4952, 4953, and 4959.

\* \* \*

[See Prior Text in A. *Affected Volatile Organic Compounds (VOC) Wastewater-1*]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:936 (September 1995), LR 22:1212 (December 1996), amended LR 24:26 (January 1998).

Gus Von Bodungen  
Assistant Secretary

9801#068

## RULE

### Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Emission Standard for Asbestos  
(LAC 33:III.5151)(AQ163)

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 Quality Division regulations, LAC 33:III.5151.J.1 (AQ163).

This rule revision will require the regulated community to follow methods and procedures to prevent emissions to the outside air from the handling of asbestos-containing waste

material. The department originally promulgated the rule essentially verbatim from the federal *Asbestos NESHAP Standard*. However, there was an inherent weakness in the logic of the rule, in that the regulated community has the option of discharging no visible emission or implementing some emission control procedures to prevent emissions, but if emission control procedures are not followed, there will be emissions. The emission control procedures, specifically LAC 33:III.5151.J.1.a, are the industry standard for controlling emissions. The basis and rationale for this rule are to eliminate the contradictory language so that the *Asbestos NESHAP Standard* and LAC 33:III.5151.J.1 are consistent.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33  
ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 51. Comprehensive Toxic Air Pollutant  
Emission Control Program**

**Subchapter M. Asbestos**

**§5151. Emission Standard for Asbestos**

\* \* \*

[See Prior Text in A-J]

1. Discharge no visible emissions to the outside air during collection, processing (including incineration), packaging, or transporting or deposition of any asbestos-containing waste material generated by the source, and use one of the emission control and waste treatment methods specified in Subsection J.1.a-d of this Section.

\* \* \*

[See Prior Text in J.1.a-P.2.b]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), repealed and repromulgated in LR 18:1121 (October 1992), amended LR 20:1277 (November 1994), LR 24:27 (January 1998).

Gus Von Bodungen  
Assistant Secretary

9801#067

**RULE**

**Department of Environmental Quality  
Office of the Secretary**

Credit for Recycling Equipment  
(LAC 33:VII.10407)(OS024)

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 Solid Waste Division regulations, LAC 33:VII.10407 (OS024).

The rule amends the tax credit for qualified recycling equipment to define costs allowed under the recycling credit

program to include installation costs. This action is required to clarify that installation costs are included for recycling credit. The basis and rationale for this rule are to provide incentives for recycling nonhazardous solid waste by offering the credit for the recycling equipment program mandated in R.S. 47:6005.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part VII. Solid Waste**

**Subpart 2. Recycling**

**Chapter 104. Credit for Recycling Equipment  
§10407. Technical Specifications for Qualified  
Recycling Equipment**

\* \* \*

[See Prior Text in A - A.3]

B. The following categories of equipment will be excluded from certification as qualified recycling equipment:

1. vehicles as defined in LAC 33:VII.10405;
2. in-kind replacement of parts for machinery or apparatus;
3. structures, machinery, equipment, or devices used to store or incinerate waste materials; and
4. used equipment.

C. The department shall determine the costs to obtain and construct the qualified equipment that may be allowed for the credit. When the equipment is built from components and assembled at the installation site or a site separate from the installation site, and subsequently transported and installed at the installation site, the costs of the components, the costs to assemble the components, and the costs to install the components shall be considered the allowed costs.

D. The costs of material and labor to construct a building or other structure necessary to support the equipment or to protect the equipment and operators from the elements while they operate the equipment shall be allowed costs, provided that the building or structure is used exclusively in connection with the recycling operations.

E. Under no circumstances shall any of the following be considered allowed costs:

1. financial charges;
2. the costs of acquiring land or rights in land and any costs incidental thereto, including recording fees; and
3. the costs to construct a building or structure to store raw material or finished products.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6005.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 18:841 (August 1992), amended LR 24:27 (January 1998).

Herman Robinson  
Assistant Secretary

9801#071

## RULE

### Department of Environmental Quality Office of Water Resources Municipal Facilities Division

Drinking Water Revolving Loan Fund  
(LAC 33:IX.2201-2213)(WP027)

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 Municipal Facilities Division regulations, LAC 33:IX.Chapter 22 (WP027).

This rule establishes requirements for participation in the Drinking Water Revolving Loan Fund program as authorized by the Safe Drinking Water Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature. The Drinking Water Revolving Loan Fund will provide financial assistance to qualified borrowers for the construction of eligible drinking water facilities. The rule provides information relating to eligibility of projects, application requirements, environmental reviews, and loan conditions. The basis and rationale for this proposed rule are to implement the Drinking Water Revolving Loan Fund program as authorized by the Safe Drinking Water Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature and to provide the mechanism for the state to qualify for federal funds that will provide financial assistance to water systems for the construction of eligible drinking water facilities.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

#### Title 33

#### ENVIRONMENTAL QUALITY

#### Part IX. Water Quality

#### Chapter 22. Drinking Water Revolving Loan Fund

#### §2201. Introduction

A. The Department of Health and Hospitals, Office of Public Health (OPH), is the state agency within Louisiana granted primary enforcement responsibility from the EPA to ensure that public drinking water systems within the state are in compliance with state regulations that are no less stringent than federal drinking water regulations adopted in accordance with the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f et seq.). The SDWA Amendments of 1996 authorized a state revolving loan fund program and grants to assist water systems in financing the costs of infrastructure improvements to achieve compliance with the SDWA.

B. In accordance with the Louisiana Constitution and authorizing legislation, the Department of Environmental Quality (the department) is assisting OPH in the financial administration of the Drinking Water Revolving Loan Fund (the fund). Regulations governing the fund program are promulgated by both OPH and the department.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:28 (January 1998).

#### §2203. Authority

These regulations provide for the Drinking Water Revolving Loan Fund as required by R.S. 30:2011 et seq. and in particular R.S. 30:2011(A)(3), (D)(1); 2074(A)(4), (B)(8); R.S. 40:2824(A); 2826(A), (B), (E), and (F).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:28 (January 1998).

#### §2205. Definitions

The following terms used in these regulations shall have the following meanings:

*Administrative Fee*—the fee due from a borrower to the department at the origination of a loan and/or on the outstanding principal amount of a loan payable in installments at such rate or rates and at such time or times as may be established by the secretary.

*Applicant*—any person, as defined, that submits an application for financial assistance in accordance with these regulations.

*Binding Commitment Agreement*—an instrument evidencing a legal obligation by the department, acting on behalf of the state, to a person that sets forth terms for making a loan from the fund and/or providing such other financial assistance as may be authorized in connection with the program.

*Borrower*—any person receiving financial assistance for the construction of a drinking water facility.

*Completion Date*—the date the operation of a completed project receiving financial assistance from the fund is initiated or capable of being initiated, whichever is earlier.

*Construction*—includes preliminary planning, engineering, architectural, legal, fiscal, and economic investigations and/or studies, surveys, designs, plans, working drawings, specifications, erection, building, acquisition, alteration, remodeling, improvement, or extension of the project.

*Department*—the Louisiana Department of Environmental Quality.

*Drinking Water Facilities*—facilities for the purpose of collecting, transporting, treating, storing, distributing, or holding drinking water.

*Environmental Review*—an assessment by the department of the environmental impact of a proposed project and assurances that the project will comply with all environmental laws and executive orders applicable to the project area.

*Financial Assistance*—loans, credit enhancement devices, guarantees, pledges, interest rate swap agreements, linked deposit agreements, and other financial subsidies authorized by law.

*Fund*—the Drinking Water Revolving Loan Fund established by the department in accordance with the Safe Drinking Water Act (SDWA) Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature.



*Letter of Intent*—a written notification of the intent of the applicant to participate in the fund program. The notification must include a request for financial assistance, the estimated amount of financial assistance, and an estimated construction schedule and document the authority of the applicant.

*Loan or Loans*—a disbursement of money made by the department from the fund to a person in accordance with a loan and pledge agreement.

*Loan and Pledge Agreement*—a contractual arrangement by and between a person and the state acting by and through the department, providing for a loan or loans to such person for the purpose of paying the eligible cost of a project or projects.

*Operation, Maintenance, and Replacement (O, M, and R)*—those functions that result in expenditures during the useful life of the drinking water facilities for materials, labor, utilities, and other items that are necessary for managing and maintaining the drinking water facilities to achieve the capacity and performance for which such works were designed and constructed, including replacement.

*Person*—any individual, partnership, firm, corporation, company, cooperative, association, society, trust, or any other business unit or entity, including any municipality, or state agency.

*Project or Projects*—the activities or tasks identified in a loan and pledge agreement for which a person has made a loan and may expend, obligate, or commit loan proceeds.

*Secretary*—the secretary of the Department of Environmental Quality.

*State*—the state of Louisiana or any agency or instrumentality thereof.

*System Improvement Plan*—the necessary plans and studies relating to the construction of a complete project of drinking water facilities.

*User Charge*—a charge or fee levied on users of drinking water facilities for the cost of operation, maintenance, and replacement. User charges may include other costs such as the repayment of debt incurred for the construction of the drinking water facilities.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:28 (January 1998).

### **§2207. Eligibility for Participation**

A. Letter of Intent. An applicant shall send a letter of intent to the department and OPH.

B. Eligible Projects. Financial assistance may be provided only for the construction of drinking water facilities as described in a system improvement plan approved by OPH. The department may consider criteria such as ownership, ability to repay, managerial capability, or other such criteria to determine the amount and type of financial assistance for a project.

C. Allowable/Eligible Costs. Allowable cost determinations, based on applicable law and regulations, may be made by OPH or the department, on a project-by-project basis.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:29 (January 1998).

### **§2209. Application Requirements and Loan Conditions**

A. Limitation on Applications. An application shall only be funded after authorization from OPH and after meeting all of the department's requirements.

B. Application Package. The contents of the application package must contain all applicable information required by the department including, but not limited to, the following:

1. System Improvement Plan. The applicant will submit, through OPH, a system improvement plan consisting of those necessary plans and studies that directly relate to construction of drinking water facilities. The system improvement plan must contain enough information to allow the department to perform an environmental review.

2. Financial Information. The applicant is required to submit sufficient information to demonstrate its legal, institutional, managerial, and financial capability to ensure the construction, operation, and maintenance of the drinking water facilities and repayment of the loan, interest, and administrative fees.

3. Site Certificate. The applicant must submit a certificate executed by an attorney certifying that the applicant has acquired all property sites, easements, rights-of-way, or specific use permits necessary for construction, operation, and maintenance of the project described in the approved system improvement plan.

C. Loan Conditions. Loans for projects will be made only to eligible applicants that:

1. provide a fair and equitable user charge system that generates revenues sufficient to cover the costs of O, M, and R for the system;

2. agree to own, operate, and maintain the drinking water facilities so that such drinking water facilities will function properly as long as the loan and pledge agreement is in effect;

3. agree to properly maintain financial records, have periodic audits, and make these records available to the department, OPH, EPA, or their designees upon request;

4. commit to undertake the expenditure of loan proceeds for construction or other eligible project costs within six months after entering into a binding commitment agreement or such time frame as may be required by the department, provided that failure to start the expenditure of funds within one year after entering into a binding commitment agreement may result in the withdrawal by the department of all financial assistance;

5. agree to evidence the loan by a bond, note, or other form of evidence of indebtedness prescribed or approved by the department; and

6. agree to pay administrative fees imposed by the department to defray long term administrative costs associated with the fund program.

D. Loan Period. Loans shall be made for a period of time not to exceed 20 years from the completion date of the construction of a project, except for loans for projects for disadvantaged communities as defined by OPH that may have loan periods up to 30 years with approval of the department.

interim construction financing shall not exceed two years without written approval from the department and from OPH.

E. Loan Repayment. Loan repayments of the principal, administrative fees, and interest installments will be set by the department, with the first installment due no later than one year following the project's completion date. The department will establish the loan repayment schedule in the terms of the loan and pledge agreement.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:29 (January 1998).

#### **§2211. Events of Default and Remedies**

The provisions for events of default and remedies will be specified in the loan and pledge agreement for each borrower receiving a loan from the fund. The secretary or the undersecretary of the department must approve all remedies for events of default.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:30 (January 1998).

#### **§2213. Miscellaneous**

The department may take certain actions and require a borrower to take actions necessary to assure compliance by such borrower with requirements of the *Internal Revenue Code* of 1986, as amended, in connection with a loan from the fund. The borrower shall reimburse the department for any cost incurred by the department in connection with any such actions.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:30 (January 1998).

Linda Korn Levy  
Assistant Secretary

9801#065

### **RULE**

#### **Office of the Governor Division of Administration Property Assistance Agency**

Federal Property Assistance Program  
(LAC 34:IX.Chapters 1-31)

The Office of the Governor, Division of Administration, Property Assistance Agency in accordance with R.S. 49:950 et seq., in order to be in conformity with law, has amended the following rules governing the Federal Property Assistance Program.

Executive Order MJF 97-19, dated January 1, 1997, authorizes the name of the program to be the Louisiana Federal Property Assistance Program, a unit of the Louisiana Property Assistance Agency, a section of the Division of Administration

in the Executive Branch of the Office of the Governor. This executive order authorizes the director of the agency, acting through the program manager, to possess all power and authority necessary to exercise and perform all the functions, duties, and responsibilities cited in the plan of operation, so as to comply with all applicable state and federal laws and regulations. The following changes are designed to accommodate the executive order.

#### **Title 34**

### **GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL**

#### **Part IX. Federal Property Assistance Program**

#### **Chapter 1. Legal Authority**

##### **§101. Executive Order**

Executive Order MJF 97-19, dated January 1, 1997, authorizes the name of the program to be the Louisiana Federal Property Assistance Program, a unit of the Louisiana Property Assistance Agency, a section of the Division of Administration in the Executive Branch of the Office of the Governor. This executive order authorizes the director of the agency, acting through the program manager, to possess all power and authority necessary to exercise and perform all the functions, duties and responsibilities cited in the plan of operation, so as to comply with all applicable state and federal laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), repromulgated LR 9:839 (December 1983), amended by the Property Assistance Agency, LR 24:30 (January 1998).

##### **§103. Attorney General's Ruling**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 104-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), repromulgated LR 9:839 (December 1983), repealed by the Property Assistance Agency, LR 24:30 (January 1998).

##### **§105. Appropriations Bill**

The ancillary budget identifies the revolving fund of the program which is used as the means of financing for the program's operations.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), repromulgated LR 9:839 (December 1983), amended by the Property Assistance Agency, LR 24:30 (January 1998).

#### **Chapter 3. Designation of State Agency**

##### **§301. Agency Responsible**

The Federal Property Assistance Program, a unit of the Louisiana Property Assistance Agency, a section of the Division of Administration, which is in the Executive Branch of the Office of the Governor, is designated as the agency responsible for administering the federal surplus property program in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), repromulgated LR 9:839 (December 1983), amended by the Property Assistance Agency, LR 24:30 (January 1998).

### §303. Organization of the Program

The program is under the supervision of the program manager, who directs the implementation of this plan of operation, which fully outlines the provisions of P.L. 94-519. This is a permanent plan of operation that is in compliance with 41 CFR 101-44 and P.L. 94-519. The program manager, with a staff of 16 employees, directs the operation of the program through inspection, selection, acquisition, transportation, storage, and issuance of federal surplus property to eligible donees in the state of Louisiana. The main segments of the organization are:

1. program management;
2. administration;
3. procurement, compliance, and utilization;
4. operations and property distribution.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), amended LR 9:839 (December 1983), amended by the Property Assistance Agency, LR 24:31 (January 1998).

### §305. Facilities

The program offices are located at 1635 Foss Drive, Baton Rouge, Louisiana. The central facilities are at this location, which includes approximately 29,000 square feet of covered space, 200,000 square feet of outside storage space, and 900 square feet of parking. This facility is owned by the state of Louisiana and is rent-free.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:412 (October 1977), repromulgated LR 9:840 (December 1983), amended by the Property Assistance Agency, LR 24:31 (January 1998).

## Chapter 5. Inventory Control and Accounting System

### §501. Inventory Control

A. Scope of Accountability System. The program shall maintain accurate accountability records of all donable property approved for transfer to the program and donable property received, warehoused, distributed, and disposed of by the program. Accountability records of all passenger motor vehicles and single items having an acquisition cost of \$5,000 or more, on which restrictions are imposed, shall be maintained in order to identify the items.

#### B. Checking Property into Program Custody

1. All property received shall be checked in promptly, as soon as full identification can be completed.

2. The approved copy of the Standard Form 123 (SF-123) is used as the basis for checking property into the program facility. The inventory adjustment voucher shall be used for property received without the SF-123. To supplement

these, available shipping documents, invoices, trucking bills of lading, donee reports, etc. will be used.

3. Exceptions or differences in a line item on the SF-123 are noted when the item(s) are received to reflect any increase or decrease as it affects the line item. This action will be documented to report any change in the amount initially allocated on a report of overages/shortages. This action is subsequently posted to the Property Receipts Register.

4. The SF-123 is considered as an order; therefore, any differences, over or short, are recorded on the Shortage/Overage Report Form. Copies of this form in every case are forwarded to the General Services Administration (GSA) regional office involved. A copy is also mailed to the holding agency when the record of receipt shows a variance from the quantities and items shown on shipping documents.

5. In accordance with the requirements of Federal Property Management Regulations (FPMR) 101-44.115 concerning overages, when the estimated fair value or acquisition cost of a line item of property is over \$500, it will be listed on the SF-123 and sent to the GSA regional office for approval.

C. All issues of property to eligible donees are recorded on a distribution document (invoice) with provisions made for recording the name of the item, state serial number, quantity, government acquisition cost, and service charges.

#### D. Periodic Verification of Property on Hand

1. A financial verification of the property on hand at the end of each month at the state agency is made and reconciled with the books, in accordance with accepted accounting practices.

2. A physical inventory will be completed each fiscal year. This physical inventory will be compared with a unit-generated computer printout as each segment is completed. All differences will be properly noted, recorded, and will become a part of the regular accounting system. Any adjustments on items shall be reported to the manager for approval and any necessary follow-up and corrective action.

#### E. Tracing Property from Receiving Document to Issue Document

1. Each line item on the receiving report (Form 123) must be entered on the computer including noun nomenclature, federal supply classification code (group code), government acquisition cost, condition code, receipt date, and quantity received. Each receiving document is recorded in a register, and a file folder is maintained for each receiving document.

2. Each warehouse write-up document is numbered and filed numerically by month.

3. Every issue document (invoice) that is generated from the warehouse write-up documents must be entered on the computer so that the computer reports accurately reflect the federal property inventory. Each issue document is filed numerically by month. These documents are also filed by donee organization and are grouped by parish.

#### F. Means of Determining Quantity of Various Types of Property Donated to Individual Donees

1. A file folder is maintained in the program offices for each eligible donee. This folder will hold a copy of each

distribution document (invoice), monthly status of account, correspondence, reports, and other items involving transactions with the donee.

2. A separate compliance record is maintained for each donee on items with a unit acquisition cost of \$5,000 or more and on all passenger motor vehicles on which restrictions are imposed.

3. A summary of distribution to record the acquisition cost of property transferred to each eligible unit is prepared monthly.

G. Disposal of Property of No Value to Program. Property will be reported to GSA for transfer to another state agency or disposed of by public sale, dumping, or abandonment, as authorized. Appropriate records are maintained to cover such disposals, in accordance with the procedures and requirements of FPMR 101-44.205.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), amended LR 9:840 (December 1983), amended by the Property Assistance Agency, LR 24:31 (January 1998).

### **§503. Financial Accounting**

Scope. A double entry financial accounting system provides a full accounting of all property requested, screened, received, issued, and disposed of, plus income, expenses, and status of the revolving fund. The system includes:

1. distribution documents (invoices);
2. accounts payable;
3. accounts receivable;
4. sale register (issues);
5. property receipts register;
6. deposit slips and vouchers;
7. cost center responsibility report (budget control);
8. general ledger;
9. payment of bills and expenses;
10. monthly financial report;
11. in-use inventory;
12. State Property Inventory Control Report;
13. record of disposals;
14. statistical analysis reports.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:413 (October 1977), amended LR 9:840 (December 1983), repromulgated by the Property Assistance Agency, LR 24:32 (January 1998).

## **Chapter 7. Return of Donated Property**

### **§701. Return of Property by Donee**

A. When a determination has been made that property has not been put in use by a donee within one year from the date of receipt of the property, or when the donee has not used the property for one year thereafter under the terms and conditions of the Application, Certification, and Agreement Form signed by the chief executive officer or other authorized representative of the donee as a condition of eligibility (and repeated on the reverse side of each distribution document), the donee, if property is still usable, as determined by the program office, must either:

1. return the property, at its own expense, to the program warehouse;

2. transfer the property to another eligible donee within the state or to a federal agency, as directed by the program manager;

3. make such other disposal of the property, as the program manager may direct.

B. The program manager will periodically emphasize this requirement when corresponding and meeting with donees and when surveying and auditing utilization of donated property at donee facilities.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:413 (October 1977), repromulgated LR 9:540 (December 1983), amended by the Property Assistance Agency, LR 24:32 (January 1998).

## **Chapter 9. Financing and Service Charges**

### **§901. Financing**

A. The state legislature approves the budget for the program, and an appropriation bill is signed into law by the governor each fiscal year which allows the program to operate a revolving fund. This allows the program to receive service charges from donees in order to defray the costs of the operating within the approved budget.

B. Funds expended or advanced, or commitments made or incurred shall be paid or provided for from the receipts of the program's revolving fund prior to the close of the fiscal year.

C. The revolving fund is established with the state treasurer to maintain the revenues from service charges which cover the costs of administering and operating this program. Monies deposited to the revolving fund must be used only for such purposes and for the short- and long-term benefit of the donees.

D. All income from service charges and other monies received by the program are deposited to the revolving fund. Payments covering all expenses are made by state check. All remittances must be in the form of checks drawn on the account of the donee and made payable to the program. All expenditures made from the revolving fund will be in accordance with federal regulations as per FPMR 101-44.202(c)(5).

E. Any evident surplus in the revolving fund shall be passed directly to the donees' benefit through reduction in the service charges for the current inventory during the fiscal year. Surpluses during the fiscal year may be utilized by the manager to acquire additional distribution facilities, improve existing facilities, or other capital expenditures deemed by the manager to be in the best overall interests of the donees. In the event the program is to be terminated, service charges will be reduced to the extent that any surplus will be passed on to the donees on the usable inventory.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:413 (October 1977), repromulgated LR 9:841 (December 1983), amended by the Property Assistance Agency, LR 24:32 (January 1998).

### **§903. Service Charges**

A. Service charges are established for items at the time of receipt of the property and are designed to effect full recovery of the cost of operations of the program. The service charges shall be clearly marked on each item or lot. The service charges are based on the prorated expenses incurred annually by the program including, but not limited to, the following major cost areas: personnel, transportation, utilities, fuels, telephone, warehousing, storage, compliance, insurance, printing, supplies, and travel.

B. The service charges assessed each item shall be reasonable and fair in relation to the cost incurred and the services performed by the program. Emphasis will be placed on keeping the service charges to a minimum, but at the same time, providing the necessary service. Other factors considered in determining service charges are original acquisition cost, present value, screening cost, quantity, condition, desirability of property, transportation, loading and unloading cost, packing and crating, administrative cost, utilization and compliance, and delivery to donee when required.

C. The service and handling charge will be determined by applying zero to 50 percent of original acquisition cost or fair market value, taking into consideration factors listed in §903.B, D, and E and §907.C. The total of the service charges for all property donated by the program during any given fiscal year shall not exceed 15 percent of the original government acquisition cost of the property.

D. Special or extraordinary costs may be added to the service charges as follows.

1. Rehabilitated Property. Direct costs for rehabilitating property will be added to the service charge.

2. Overseas Property. Additional direct costs for returning the property may be added.

3. Long-Haul Property. Charges for major items with unusual costs may be added. Any such costs which are anticipated will be discussed with the donee prior to shipment.

4. Special Handling. An additional charge may be made for dismantling, packing, crating, shipping, delivery, and other extraordinary handling charges.

5. Screening. Extraordinary costs incurred in screening property may be added.

6. Homeless. Property provided to homeless activities (P.L. 110-77, Stewart B. McKinney Homeless Assistance Act enacted July 22, 1987) will be provided at a nominal fee.

E. The manager has the authority to reduce the service charges due to property condition. The manager may request, from the GSA regional office, a reduction on high-acquisition cost items when in poor condition, or when the item is to be used for secondary purposes.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:413 (October 1977), repromulgated LR 9:841 (December 1983), amended LR 16:690 (August 1990), amended by the Property Assistance Agency, LR 24:33 (January 1998).

### **§905. Minimal Charges**

A. Service charges for items requested by a donee and which are shipped directly from the federal holding agency to

the donee shall be based on a percentage of the acquisition cost of the item, which is derived from the percentage of the cost for each of the functions performed by the program.

B. Transportation costs, if transportation is provided by the program, shall be based on the cost per mile, cost of loading, unloading, crating, and packing. Transportation arranged by the donee shall be paid direct by the donee and must be provided in a timely manner in order not to lose the priority for the item.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:414 (October 1977), amended LR 9:841 (December 1983), amended by the Property Assistance Agency, LR 24:33 (January 1998).

### **§907. Special Donations**

A. In cases involving major items of property or otherwise where unusual expenses may be incurred, the program may negotiate the service charge with the donee.

B. The State Agency Quarterly Donation Report of Surplus Personal Property will be used to measure performance.

C. The manager has the authority to reduce the service charge when he believes that an element of the charge is not applicable, or when he deems it to be in the best interests of the program.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:414 (October 1977), repromulgated LR 9:841 (December 1983), amended by the Property Assistance Agency, LR 24:33 (January 1998).

## **Chapter 11. Terms and Conditions on Donable Property**

### **§1101. Restrictions on Property**

A. The program will require each eligible donee, as a condition of eligibility, to file with the program office an Application, Certification and Agreement form outlining the certifications, and agreements, and the terms, conditions, reservations, and restrictions under which all federal surplus personal property will be donated. Each form must be signed by the chief executive officer of the donee agreeing to these requirements prior to the donation of any surplus property. The donee shall be defined as the unit which is authorized to pay for the item(s) and which otherwise meets the qualification requirements. The certifications and agreements, and the terms, conditions, and reservations and restrictions, will be printed on the reverse side of each program distribution document (invoice), which shall be signed by the chief executive officer of the donee or his certified designee, whose name must be provided to the program office, in writing, over the signature of the chief executive officer of the donee.

B. The following periods of restriction are established by the program on all items of property with a unit acquisition cost of \$5,000 or more, and on all passenger motor vehicles.

1. Passenger motor vehicles—18 months from the date the property is placed in use.

2. Items with a unit acquisition cost of \$5,000 to \$10,000—18 months from the date the property is placed in use.

3. Items with a unit acquisition cost of over \$10,000—30 months from the date the property is placed in use.

4. Aircraft (except combat type) and vessels (50 feet or more in length) with a unit acquisition cost of \$5,000 or more—60 months from the date the property is placed in use. Such donations shall be subject to the requirements of a conditional transfer document.

5. Aircraft (combat type)—restricted in perpetuity. Donation of combat type aircraft shall be subject to the requirements of a conditional transfer document.

C. For good and sufficient reasons, such as the condition of the property, or the proposed use (secondary utilization, cannibalization, etc.), the program office may reduce the period of restriction on items of property falling within the provisions of §1101.B.3 and 4, at the time of donation, but no less than for a period of 18 months from the date the property is placed in use.

D. The program office, at its discretion, may impose such terms, conditions, reservations, and restrictions as it deems reasonable, on the use of donable property other than items with a unit acquisition cost of \$5,000 or more, and passenger motor vehicles.

E. The program office has imposed the following terms and conditions which shall be applicable during the period of compliance:

1. each passenger motor vehicle and any motorized heavy equipment (such as bulldozers, tractors, etc.) shall bear the official decal of the donee or the name of the donee in letters no less than 3 inches in height on each side of the item during the period of compliance;

2. donees which are defined as state agencies shall maintain those items which are movable, nonconsumable, and have a fair market value of \$250 or more and have been obtained from the federal surplus property program on the inventory control system defined in the State Property Control regulations of August 20, 1976;

3. donees which are not defined as state agencies shall maintain those items which are movable, nonconsumable, and have a fair market value of \$250 or more and have been obtained from the federal surplus property program on an inventory control system during the period of compliance. That inventory control system shall show the location of the items.

F. Failure to comply with the provisions of §1101.E will cause the program office to impose the following penalties on the donee:

1. return of the item to the program at the donee's expense;

2. a fine of 1 percent per day of the acquisition cost of the item shall be imposed on the donee for each day the restriction is not met;

3. the donee shall be declared ineligible as a participant in the program for a period of 90 days;

4. the manager may set aside the condition and penalties in §1101.E and F.1-3, in writing, for good and sufficient reasons.

G. Whenever information is obtained by the manager of the program from utilization reports, periodic surveys, or from other sources which indicate that a donee has failed to place property into use for the benefit acquired or within the prescribed period of time, or that there has been a loss or theft, or related acquisition, use, or disposal of property during the compliance period, the manager shall immediately initiate the appropriate investigative and compliance action as prescribed in §1903.D. When an investigation proves failure by the donee to comply with this Chapter, the manager shall impose the penalties listed in §1101.F.1-3.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:414 (October 1977), amended LR 9:841 (December 1983), amended by the Property Assistance Agency, LR 24:33 (January 1998).

### **§1103. Restrictions of Donations**

A. The program may amend, modify, or grant release of any term, condition, reservation, or restriction it has imposed on donated items of personal property, in accordance with the standards prescribed in this plan, provided that the conditions pertinent to each situation have been affirmatively demonstrated to the satisfaction of the program manager and made a matter of public record.

B. The program office will impose on the donation of any surplus item of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as GSA may determine necessary because of the characteristics of the property.

C. The program office will impose on all donees the statutory requirement that all items donated must be placed in use within one year of donation and be used for the purpose for which it was donated for one year after being placed in use or otherwise returned to the program while the property is still usable.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:415 (October 1977), amended LR 9:842 (December 1983), amended by the Property Assistance Agency, LR 24:34 (January 1998).

## **Chapter 13. Nonutilized Donable Property**

### **§1301. Methods of Disposal**

A. All property in the possession of the program office which cannot be utilized by eligible donees shall be reported to GSA for disposal authorization, in accordance with FPMR 101-44.205. In accordance with this regulation, the program office shall either:

1. transfer the property to the program of another state or to a federal agency;

2. sell the property by public sale;

3. abandon or destroy the property.

B. In the event of disposal by transfer to an agency in another state or by public sale, the program office may seek such reimbursement as is authorized in accordance with FPMR 101-44.205.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:415 (October 1977), amended LR 9:842 (December 1983), amended by the Property Assistance Agency, LR 24:34 (January 1998).

**Chapter 15. Fair and Equitable Distribution**

**§1501. Methods for Distribution and Utilization**

A. General Policy. The program office shall arrange for a fair and equitable offering of available surplus property to the eligible units in the state, based upon their relative needs and resources and their ability to utilize the property in their program.

B. Determinations

1. The following criteria shall be used by the manager of the program in determining the relative needs and resources of donees and their ability to utilize the property:

a. the population of the parish of the donee, based on the current Preliminary Population Estimates for Louisiana by Parish. Source: Louisiana Tech University, official depository of U.S. Bureau of Census materials;

b. the per capita income of the parish of the donee. Source: current Bureau of Economic Analysis, Department of Commerce;

c. the percent of the average employed persons to the population of the parish of the donee. Source: Research and Statistics Unit, Department of Employment Security, current; and Louisiana Tech University, current Preliminary Population Estimates by Parish;

d. the daily average school attendance of the parish of the donee. Source: Louisiana Department of Education, current;

e. the number of hospital beds (short-term general hospitals) of the parish of the donee. Source: current Louisiana Hospitals Statistics of the State Office of Comprehensive Health Planning;

f. details on the scope of the donees' program, financial information, and specific items of property needed.

2. Other factors to be taken into consideration will include:

a. critical need on the part of the applicant due to a state of emergency or emergency, such as fire, flood, hurricane, etc.;

b. quantity and/or value of surplus property received by donee to date, and specific major items of equipment previously received;

c. interest and expressions of need on the part of the donee in the property available;

d. ability and willingness demonstrated by donee to inspect and select property, timeliness in removing property

from warehouse, or a request for direct shipment from a federal holding agency;

e. financial ability of donee to acquire property, repair or renovate property (if necessary), and maintain the property.

C. Applications for Surplus Property not in Inventory

1. A request for a specific item of property may be submitted by the chief executive officer, or his designee, of the donee to the manager of the program on a Request for Property form when the specific item is not in the inventory of the program.

2. The Request for Property form shall be the only means of requesting property by the donee, in order that the manager may use the same information in determining priority on competing requests for items. Priority ratings by the manager shall be made, utilizing the formula based on the criteria shown in §1501.D, and shall be based on the information submitted by the donee on the Request for Property form.

3. Falsification of any information on the Request for Property form submitted by the donee shall cause the donee's eligibility to participate in the program to be revoked for a period of 12 months.

D. Formula for Determining the Property Request Priorities

1. The program office shall use this formula for determining which donee shall receive an item for which there are competing requests. The information submitted by the donee on the Request for Property form shall be the main basis for the rating. The manager of the program shall have the authority to modify the rating formula on a quarterly basis and to delete and/or add categories, as are necessary to maintain fair and equitable distribution among the donees. The higher the donee rating, the higher the priority the donee will have for the item utilizing the formula.

2. Population by parish of the donee:

Under 10,000	10	50,001-100,000	5
10,001-20,000	9	100,001-150,000	4
20,001-30,000	8	150,001-200,000	3
30,001-40,000	7	Over 200,001	2
40,001-50,000	6		

3. Per capita income by parish of the donee:

Under \$3,000	10	\$3,901-\$4,100	5
\$3,001-\$3,300	9	\$4,101-\$4,300	4
\$3,301-\$3,500	8	\$4,301-\$4,500	3
\$3,501-\$3,700	7	Over \$4,501	2
\$3,701-\$3,900	6		

4. Percentage of average employed persons to the population by parish of the donee:

Less than 10%	10	30%-35%	5
10%-15%	9	35%-40%	4
15%-20%	8	40%-45%	3
20%-25%	7	Over 45%	2
25%-30%	6		

5. Daily school attendance by parish of the donee:

Under 5,000	10	40,000-60,000	5
5,001-10,000	9	60,001-80,000	4
10,001-20,000	8	80,001-100,000	3
20,001-30,000	7	over 100,000	2
30,001-40,000	8		

6. Number of hospital beds by parish of the donee:

0-25	5
26-50	4
51-200	3
201-500	2
over 500	1

7. State of emergency: 10

8. Emergency: 20

9. Unencumbered funds available to acquire property: Yes-10; No-0.

10. Unencumbered funds available to repair, renovate (if necessary), and maintain property: Yes-10; No-0.

11. Ability and willingness demonstrated by donee to inspect and select property, and timeliness in removing property from warehouse: 0-10.

12. Scope of donee's program and utilization of the item for the benefit of the residents: 0-10.

13. Interest and expressions of need on the part of the donee in the item: 0-10.

14. Direct pickup request from the federal holding agency by the donee: 5.

15. Value of surplus property received by donee to date:

Federal Acquisition Cost	Rating
0-\$10,000	10
\$10,001-\$ 25,000	8
\$25,001-\$ 50,000	6
\$50,001-\$100,000	4

16. Specific major items of equipment previously received: 0-10.

E. Selection and Shipment of Donable Property

1. The manager of the program shall recommend to GSA the certification of donee screeners, as are qualified and needed, in accordance with FPMR 101-44.116.

2. The program office shall, insofar as practical, on items requested on the Request for Property form, arrange for inspection and release of property directly from the holding

agencies by the donee at minimal service charges to cover legitimate costs, as detailed in Chapter 9 of this plan, when requested by the donee.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:415 (October 1977), amended LR 9:842 (December 1983), amended by the Property Assistance Agency, LR 24:35 (January 1998).

**Chapter 17. Eligibility**

**§1701. Potential Donees**

The program office will contact and instruct all known potential donees in the state on the procedures to follow to establish their eligibility to participate in the surplus property program. A listing of the potential donees in the state shall be established by using the standards and guidelines in FPMR 101-44.207, as well as the following guidelines:

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), repromulgated LR 9:843 (December 1983), amended by the Property Assistance Agency, LR 24:36 (January 1998).

**§1703. Public Agencies**

A. The Louisiana Secretary of State's *Roster of Officials*, which lists cities, towns, parishes, the judiciary, state departments, divisions, councils, boards, commissions, institutions, Indian tribes, etc.

B. The executive officers of the above units will be contacted for a listing of local departments, divisions, commissions, and councils, indicating their different activities and functions.

C. The Economic Development and Planning Commissions will be contacted for lists of their recipients who might be qualified.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), repromulgated LR 9:843 (December 1983), repromulgated by the Property Assistance Agency, LR 24:36 (January 1998).

**§1705. Nonprofit, Tax-Exempt Units**

A. State departments of education, higher education, public health, mental health, community affairs, youth services, and others will be asked for listings of all local units approved or licensed by their departments.

B. Existing listings of units now eligible to participate in the surplus property program.

C. National, regional, and state organizations and associations.

D. Inquiries, letters, telephone calls, etc., received relative to eligibility.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), amended LR 9:844 (December 1983), repromulgated by the Property Assistance Agency, LR 24:36 (January 1998).



### **§1707. Promulgating the Program**

Contacts will be made by letter, telephone calls, general meetings, and conferences with the groups in §1703 and §1705, supplemented when necessary by news releases, informational bulletins, and attendance at conferences and meetings to discuss the surplus property program.

**AUTHORITY NOTE:** Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), amended LR 9:844 (December 1983), repromulgated by the Property Assistance Agency, LR 24:37 (January 1998).

### **§1709. Requirements for Eligibility**

Each unit will be required to file with the program office, as a condition of eligibility:

1. an Application, Certification, and Agreement form, signed by the chief executive officer of the donee, accepting the terms and conditions under which property will be transferred;

2. a written authorization, signed by the chief executive officer or executive head of the donee activity, or a resolution by the governing board or body of the donee activity, designating one or more representative to act for the applicant, obligate any necessary funds, and execute distribution documents;

3. assurance of compliance indicating acceptance of civil rights and nondiscrimination on the basis of sex or handicap in accordance with GSA regulations and requirements;

4. directory information, including the applicant's legal name, address, and telephone number, and status as a public agency or nonprofit, tax-exempt educational or public health unit;

5. program details and scope, including different activities and functions;

6. a listing of specific equipment, material, vehicles, machines, or other items in which the donee would be interested in the future;

7. financial information, if necessary, for the evaluation of relative needs and resources;

8. proof of tax-exemption under Section 501(c)(3) of the *Internal Revenue Code* of 1954 (for nonprofit units only);

9. proof that the applicant is approved, accredited, or licensed in accordance with FPMR 101-44.207.

**AUTHORITY NOTE:** Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), amended LR 9:844 (December 1983), amended by the Property Assistance Agency, LR 24:37 (January 1998).

### **§1711. Recertification of Eligibility**

All approvals of eligibility will be updated every three years except those programs that are certified, approved, and/or licensed annually, which must be updated every year.

**AUTHORITY NOTE:** Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), repromulgated LR 9:844

(December 1983), amended by the Property Assistance Agency, LR 24:37 (January 1998).

## **Chapter 19. Compliance and Utilization**

### **§1901. Scope**

The program office shall conduct utilization reviews to ensure compliance by donees with the terms, conditions, reservations, and restrictions imposed on:

1. any property not placed in use within one year from the date of acquisition, and not used for a period of one year;
2. any passenger motor vehicle;
3. any item of property valued at \$5,000 or more;
4. any item having characteristics that require special handling or use limitations imposed by GSA.

**AUTHORITY NOTE:** Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), repromulgated LR 9:844 (December 1983), amended by the Property Assistance Agency, LR 24:37 (January 1998).

### **§1903. Methods**

A. The program office will arrange to visit each donee receiving major items of property, (i.e., items with a unit acquisition cost of \$5,000 or more and passenger motor vehicles with federal and/or state restrictions on the use of the property at least once during the period of restriction. All such visits will be made by the compliance/utilization audit staff or administration of the program.

B. Written reports of utilization from the chief executive officer of the donee will be requested during the periods of restricted activity or in the event of unusually heavy work loads at the program office.

C. Each visit on compliance utilization will encompass:

1. general utilization of property, including items with an acquisition cost of under \$5,000 and items listed under §1901.D;
2. compliance with all terms, conditions, reservations, and restrictions imposed on the use of the property;
3. any evidence of oversupply or stockpiling;
4. application advice for property needed;
5. effectiveness of the surplus property program;
6. recommendations for better service.

D. A report will be prepared on each compliance visit and submitted to the manager for approval. Follow-up action on noncompliance or nonuse will be taken, as necessary. Instances of suspected fraud or misuse will be reported to the Federal Bureau of Investigation and GSA. Program personnel will assist in any subsequent investigations.

**AUTHORITY NOTE:** Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:418 (October 1977), amended LR 9:844 (December 1983), amended by the Property Assistance Agency, LR 24:37 (January 1998).

## **Chapter 21. Consultation with Advisory Bodies, Public and Private Groups**

### **§2101. Representation of the Program**

A. The program office will arrange for and participate in local, regional, or statewide meetings of public and private organizations and associations which represent potential

donees to disseminate information on the program, discuss procedures and problems, and obtain recommendations on determining relative needs, resources, and the utilization of property and how the program office can provide more effective service. The program office will regularly provide information on the donation program to state and local officials, and to heads of nonprofit institutions and organizations, and will actively participate in, and, upon request, provide speakers for conferences and meetings held by public and private organizations.

B. The program office, in consultation with advisory bodies and public and private groups, will invite eligible donees to submit expressions of interest and need for property items so that the program office may advise GSA of such requirements, including requests for specific items of property.

C. A Louisiana Federal Property Assistance Program advisory board shall be established by the manager of the program. It shall be composed of one representative from each of the eight areas listed in the program Quarterly Donation Report of Surplus Personal Property. The manager shall select the representative who is felt to best represent that segment of the donees. Advisory board members shall advise the manager on means to improve the program in the areas which they represent. The representatives shall serve without pay or compensation.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:418 (October 1977), amended LR 9:844 (December 1983), amended by the Property Assistance Agency, LR 24:37 (January 1998).

## **Chapter 23. Audits**

### **§2301. Reconciling Financial Records**

A. At the close of each month the program office will conduct an internal audit which will reconcile the warehouse and office records on inventory value, disposals, property received, and property issued.

B. Annually, the audit staff of the program will conduct an audit which shall include, in addition to fiscal affairs, a review of the conformance of the program with the provisions of this plan of operation and the requirements of 41 CFR 101.44.

C. An external audit will be performed at least once every two years by the legislative auditor or by an independent certified public accountant or independent licensed public accountant who is certified or licensed by a regulatory authority of the state or other subdivision of the United States. It shall include an audit of all fiscal affairs and a review of the conformance of the program with the provisions of this plan of operation and the requirements of 41 CFR 101-44. A copy of the audit will be furnished by the program office, immediately upon completion, to the GSA regional office. The manager will advise the GSA regional office of all corrective actions taken, with respect to any exceptions or violations indicated by the audit. It is agreed that GSA may, for appropriate reasons, conduct its own audit of the program, following due notice to the governor of the reasons for such audit, and may visit the program office for purposes of reviewing the program's

operation, when it deems it appropriate.

D. Financial records and all other books and records of the program shall be available for inspections by representatives of GSA, the general accounting office, or other authorized federal activities.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:418 (October 1977), amended LR 9:844 (December 1983), amended by the Property Assistance Agency, LR 24:38 (January 1998).

### **§2303. Donee Audits**

Any state or local government, nonprofit organization or educational institution that receives item(s) valued at \$25,000 or more annually from the Donation of Federal Surplus Personal Property Program shall have an audit performed in accordance with the Office of Management and Budget Circular A-133. A copy of the audit shall be sent to the program office immediately after the donee receives the audit.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:38 (January 1998).

## **Chapter 25. Cooperative Agreements**

### **§2501. Types of Agreements**

The program has the authority to enter into such cooperative agreements with federal agencies and other state agencies as may be necessary, in accordance with FPMR 101-44.206. Such agreements may involve, but not be limited to:

1. use of property by the program;
2. overseas property;
3. use of federal telecommunications system;
4. interstate transfers;
5. others, as may be necessary.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:418 (October 1977), repromulgated LR 9:845 (December 1983), amended by the Property Assistance Agency, LR 24:38 (January 1998).

## **Chapter 27. Liquidation**

### **§2701. Procedures and Time Frame**

A. In the event of liquidation, or at the time determination has been made by state officials to liquidate the program, a liquidation plan will be prepared in accordance with FPMR 101-44.201.c.14.

B. The liquidation plan shall include:

1. reasons for liquidation;
2. schedule and estimated date of termination;
3. method of disposal of surplus property on hand, consistent with the provisions of FPMR 101.44.205;
4. method of disposal of agency's physical and financial assets;
5. retention of books and records for a five-year period following liquidation.

C. Such plan will be submitted to GSA and its approval secured prior to the beginning of liquidation.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:419 (October 1977), amended LR 9:845 (December 1983), amended by the Property Assistance Agency, LR 24:38 (January 1998).

**Chapter 29. Forms**

**§2901. Types and Utilization**

A. The distribution document (invoice) shall be used as the standard issue document and the invoice for all issues of surplus property to eligible donees or other states. The terms and conditions shall be printed on the back of each prenumbered distribution document (invoice).

B. Certain specific items require conditional transfer documents in addition to the standard forms:

1. noncombat type aircraft with a unit acquisition cost of over \$5,000 require a conditional transfer document;
2. combat type aircraft with a unit acquisition cost of over \$5,000 require a conditional transfer document;
3. vessels over 50 feet in length with a unit acquisition cost of over \$5,000 require a conditional transfer document.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:419 (October 1977), amended LR 9:845 (December 1983), amended by the Property Assistance Agency, LR 24:39 (January 1998).

**Chapter 31. Records**

**§3101. Time Frame for Retention**

All official records of the program will be retained for no less than five years, except records involving property in compliance status for six years or longer will be kept for at least one year after the case is closed.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:419 (October 1977), repromulgated LR 9:845 (December 1983), amended by the Property Assistance Agency, LR 24:39 (January 1998).

Irene C. Babin  
Director

9801#019

**RULE**

**Department of Health and Hospitals  
Board of Physical Therapy Examiners**

Licensure; Unauthorized Practice; and  
Supervision (LAC 46:LIV.Chapters 1 and 3)

Notice is hereby given, in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, that the Board of Physical Therapy Examiners (board), pursuant to the authority vested in the board by R.S. 2401.2A(3), has amended rules relative to the practice of physical therapy.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIV. Physical Therapy Examiners  
Subpart 1. Licensing and Certification**

**Chapter 1. Physical Therapists and Physical Therapist Assistants**

**Subchapter A. General Provisions**

**§107. Qualifications for License**

A. - B.5. ...

C. The burden of satisfying the board as to the qualifications and eligibility of the applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:662 (July 1991), 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998).

**Subchapter C. Graduates of Foreign Physical Therapy Schools**

**§115. Qualification for License**

A. - A.1. ...

2. have successfully completed his education in physical therapy that is substantially equivalent to the requirements of physical therapists educated in accredited physical therapy programs in the United States as the board, upon evaluation of the applicants educational program by an approved credentials evaluation service, deems sufficient, however, such substantially equivalent education shall be no less than a total of 120 semester hour credits which includes a minimum of 60 semester hour credits for professional education and a minimum of 40 semester hours of general education as established in a course work evaluation total approved by the board;

3. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 18:962 (September 1992), LR 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998).

**Subpart 3. Practice**

**Chapter 3. Practice**

**Subchapter A. General Provisions**

**§303. Definitions**

As used in this Chapter, the following terms and phrases shall have the meanings specified:

\* \* \*

*Student*—means a person who is pursuing a course of study leading to a degree as a physical therapist (SPT) or a physical therapist assistant (SPTA) in a professional education

program approved by the board and is satisfying supervised clinical education requirements related to his physical therapy education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), LR 21:394 (April 1995), LR 24:39 (January 1998).

### §305. Special Definition: Practice of Physical Therapy

A. As used in the definition of *practice of physical therapy* set forth in the Physical Therapy Practice Act, and as used in this Chapter, the following terms shall have their meanings specified:

\* \* \*

*Continuous Supervision*—means responsible, continuous, on-the-premises observation and supervision by a licensed physical therapist of the procedures, functions and practice rendered by a physical therapy aide/technician; student; physical therapist assistant permittee pending licensure by examination or re-examination; and physical therapist temporary permittee who has once failed the licensing examination.

\* \* \*

#### *Physical Therapy Supportive Personnel*

a. ...

b. *Physical Therapist Assistant*—a person licensed by the board who is a graduate of an associate degree program in physical therapist assisting accredited by the American Physical Therapy Association or was granted licensure pursuant to R.S. 37:2403(D). The physical therapist assistant may not supervise physical therapy aides/technicians without a physical therapist continuously on the premises.

c. The level of responsibility assigned to *physical therapy supportive personnel* is at the discretion of the physical therapist, who is ultimately responsible for the acts or omissions of these individuals. Supportive personnel may perform only those functions for which they have documented training and skills. The prohibitions for physical therapy supportive personnel shall include, but not be limited to, interpretation of referrals; performance of evaluations; initiation or adjustment of treatment programs; assumption of the responsibility for planning patient care; or any other matters as determined by the board. The physical therapist shall only delegate portions of the treatment session to an aide/technician only after the therapist has assessed the patient's status.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:738 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:666 (July 1991), LR 19:208 (February 1993), LR 21:1243 (November 1995), LR 24:40 (January 1998).

## Subchapter B. Prohibitions

### §307. Unauthorized Practice

A. ...

B. A physical therapist shall use the letters "P.T." in connection with his name or place of business to denote licensure. A physical therapist assistant shall use the letters "P.T.A." in connection with his name to denote licensure. No person shall hold himself out to the public, an individual patient, a physician, dentist or podiatrist, or to any insurer or indemnity company or association or governmental authority as a physical therapist, physiotherapist or physical therapist assistant, nor shall any person directly or indirectly identify or designate himself as a physical therapist, physiotherapist, registered physical therapist, licensed physical therapist, physical therapist assistant, or licensed physical therapist assistant, nor use in connection with his name the letters, P.T., L.P.T., R.P.T., or P.T.A., or any other words, letters, abbreviations, insignias, or sign tending to indicate or imply that the person constitutes physical therapy, unless such person possesses a current license or temporary permit duly issued by the board.

C. A physical therapy student who is pursuing a course of study leading to a degree as a physical therapist in a professional education program approved by the board and is satisfying supervised clinical education requirements related to his physical therapy education shall use the letters "S.P.T." in connection with his name while participating in this program. A physical therapist assistant student who is pursuing a course of study leading to a degree as a physical therapist assistant in a professional education program approved by the board and is satisfying supervised clinical education requirements related to his physical therapist assisting education shall use the letters "S.P.T.A." in connection with his name while participating in this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 21:395 (April 1995), LR 24:40 (January 1998).

### §309. Exemptions

A. - B. ...

C. A student shall be exempt from licensure when pursuing a course of study leading to a degree in physical therapy or physical therapist assisting in a professional education program approved by the board and is satisfying supervised clinical education requirements related to his education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 24:40 (January 1998).

**Subchapter C. Supervised Practice**

**§317. General Supervision Requirements for Permittees**

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

2. not have been subject, within a period of three years prior to undertaking such responsibility, to administrative action or consent order by the board which resulted in sanction to his physical therapy license. The three-year period shall commence upon satisfactory completion of the sanction.

- 3. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:667 (July 1991), LR 24:41 (January 1998).

**§319. Additional Supervision Requirements for Foreign Graduate Physical Therapists**

- A. - B.1. ...

2. provide the board with a written certification, following the conclusion of a foreign graduate physical therapist's clinical training as required by §115.A.3, that the permittee has accumulated not less than 1,000 hours of actual clinical experience in the practice of physical therapy under the periodic and/or continuous supervision of the licensed physical therapist as required in §§115, 159 and 305.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:667 (July 1991), LR 19:208 (February 1993); LR 24:41 (January 1998).

**§321. Supervision Requirements**

- A. - C.2. ...
- D. Student

1. The supervising physical therapist shall provide continuous, on-the-premises supervision of a student in all practice settings.

2. A physical therapist shall supervise no more than five students at any given time.

- E. Supervision Ratio

1. A physical therapist shall not supervise:

- a. more than three physical therapist assistants and/or aides/technicians at any one time;
- b. more than two permittees at any one time; or
- c. more than five students at any one time.

2. A supervising physical therapist must comply with the supervision ratios required in §321.E.1 and shall not exceed the maximum of a 1:5 ratio in any combination of such supervised individuals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and

Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), LR 24:41 (January 1998).

Sharon Toups  
Chairman

9801#014

**RULE**

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

Veterinary Practice Facilities (LAC 46:LXXXV.711)

*(Editor's Note: The following Section of a rule, published on pages 969-970 of the August 1997 Louisiana Register, is being repromulgated to include text which was inadvertently omitted.)*

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 7. Veterinary Practice**

**§711. Definitions for Classification of Practice Facilities**

A. In order to be classified as, advertised as, or use the word "hospital" as defined in §700 in the name of a veterinary facility, all of the following minimum standards and requirements shall be met:

- 1. - 4. ...

5. Facility shall have access to a diagnostic x-ray machine and development equipment area kept in compliance with state and federal regulations.

- 6. - 8. ...

- B. - D.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1331 (October 1993), amended LR 23:969 (August 1997), repromulgated LR 24:41 (January 1998).

Charles B. Mann  
Executive Director

9801#008

**RULE**

**Department of Health and Hospitals  
Office of Public Health**

Sanitary Code—Milk and Milk Products (Chapter VII)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:4A(1) and R.S. 40:5, has amended rules contained in Chapter VII pertaining to Grade A raw milk for pasteurization

certified for interstate milk shipment and Grade A pasteurized milk certified for interstate milk shipment, by adding two new sections as set forth below:

Add Section 7:091.1 to read:

**7:091.1 Grade A Raw Milk for Pasteurization Certified for Interstate Milk Shipment.** Grade A raw milk for pasteurization certified for interstate milk shipment is raw milk produced on dairy farms in Louisiana that meets all requirements of the Sanitary Code, State of Louisiana, as well as the requirements for Grade A as set forth by the National Conference on Interstate Milk Shipments (NCIMS). In cases of "conflicting provisions," the stricter codal requirement must be met.

Raw milk produced in Louisiana in substantial compliance with the provisions in this Section may be certified by the state health officer for inclusion in the U.S. Food and Drug Administration Interstate Milk Shippers List.

\* \* \*

Change 7:094 to correct a typographical error pertaining to the grade of milk:

**7:094 Grade A Pasteurized Milk.** Grade A pasteurized milk is Grade A raw milk for pasteurization which has been pasteurized, cooled, and placed in the final container in a milk plant conforming with all of the sections of sanitation in this Chapter. In all cases, milk shall show efficient pasteurization as evidenced by a satisfactory phosphatase test. At no time after pasteurization and until delivery shall milk have a bacterial plate count exceeding 20,000 per milliliter or a coliform count exceeding 10 per milliliter in more than one of the last four samples.

\* \* \*

Add Section 7:094.1 to read:

**7:094.1 Grade A Pasteurized Milk Certified for Interstate Milk Shipment.** Grade A pasteurized milk certified for interstate milk shipment is pasteurized milk certified for interstate milk shipment that meets all Grade A requirements of the Sanitary Code, State of Louisiana as well as the requirements for Grade A as set forth by the National Conference on Interstate Milk Shipments (NCIMS). In cases of "conflicting provisions," the stricter codal requirement must be met.

Pasteurized milk processed in Louisiana in substantial compliance with the provisions in this Section may be certified by the state health officer for inclusion in the U.S. Food and Drug Administration Interstate Milk Shippers List.

\* \* \*

Bobby P. Jindal  
Secretary

9801#061

## RULE

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

Home and Community  
Based Services—Elderly  
and Disabled Adults Waiver

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is adopted 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 adopts the following regulations governing the Home Care for the Elderly waiver program to:

- 1) redefine the target population served by the waiver and rename the waiver;
- 2) establish an average cost per day limit each participant of the waiver;
- 3) establish and define new services;
- 4) establish methodology for the assignment of slots; and
- 5) clarify admission and discharge criteria, mandatory reporting requirements and the reimbursement requirement for the prior approval of the plan of care.

The total number of slots assigned shall not exceed the maximum number of slots approved by the Health Care Financing Administration. The assignment of vacated and previously unoccupied waiver slots; admission and discharge criteria; the array of services; calculation of waiver costs; mandatory reporting requirements and reimbursement for services provided prior to the approval of the plan of care shall be determined in accordance with the following guidelines.

#### Definition of Targeted Population for the Waiver

This home and community based services waiver is targeted at persons who qualify for admission to a nursing facility and are over age 65 or adults, age 21 or over, who are disabled according to Medicaid standards. It shall be called the Elderly and Disabled Adult waiver.

#### Guarantee of Waiver Costs

In order to assure the cost effectiveness of this entire home and community based services waiver each participant shall be limited to an array of services whose average cost per day shall not exceed a limit set by the bureau. This figure shall be

set annually at a percentage of the average costs borne by the Medicaid program for the equivalent population receiving nursing facility services, with an allowance for temporary, brief periods of excess costs in order to maintain a participant in the community. Case managers shall complete a budget analysis form as part of each care plan which shall list the types and number of services necessary to maintain the waiver participant safely in the community, the cost of those services and the average cost per day covered by the care plan.

#### **Programmatic Allocation of Waiver Slots**

The waiting list shall be used to protect the individual's right to be evaluated for waiver eligibility. Each waiver slot may be filled only once during each waiver year. When funding becomes available for a new waiver slot or a slot that has been vacated in the previous waiver year, staff of the Intake Offices at the local Councils on Aging shall notify the next individual in order of application on the waiting list in writing that a slot is available and that they are next in line to be evaluated for possible waiver slot assignment. A copy of the notification letter shall be forwarded to the Health Standards Section of BHSF. A case manager assists in the gathering of the documents needed for both the financial and medical certification eligibility process. If the individual is determined to be ineligible either financially or medically, that individual is notified in writing and a copy of the notice is forwarded to the Council on Aging office. The next person on the waiting list is notified as stated above and the process continues until an eligible person is encountered. A waiver slot is assigned to an individual when eligibility is established and the individual is certified.

#### **Waiver Admission Criteria**

Admission to this Waiver Program shall be determined in accordance with the following criteria.

1. initial and continued Medicaid eligibility as determined by the parish BHSF Office;
2. initial and continued eligibility for a nursing facility level of care as determined by the Health Standards Section of BHSF;
3. the plan of care must provide justification that the waiver services are appropriate, cost effective and represent the least restrictive treatment alternative for the individual; and
4. assurance that the health and safety of the individual can be maintained in the community with the provision of reasonable amounts of waiver services as determined by the Health Standards Section of BHSF.

#### **Waiver Discharge Criteria**

Participants shall be discharged from this Waiver Program if one of the following criteria is met:

1. loss of Medicaid eligibility as determined by the parish BHSF Office;
2. loss of eligibility for a nursing facility level of care as determined by the Health Standards Section of BHSF;
3. incarceration or placement under the jurisdiction of penal authorities, or courts;
4. change of residence to another state with the intent to become a resident of that state;

5. admission to a nursing facility or any other long term care institutional setting;

6. the health and welfare of the waiver participant cannot be assured in the community through the provision of amounts of waiver services within the cost cap as determined by the Health Standards Section of BHSF, i.e., the waiver participant presents a danger to himself or others;

7. failure to cooperate in either the eligibility determination process or the performance of the care plan; or

8. continuity of services is interrupted as a result of the participant not receiving waiver services during a period of 14 or more consecutive days. This does not include interruptions in services because of hospitalization.

#### **Mandatory Reporting Requirements**

Case managers and waiver service providers are obligated to report changes that could affect the waiver participant's eligibility, including but not limited to those changes cited in the discharge criteria, to either the parish BHSF Office or the Health Standards Section of BHSF within five working days. In addition, case managers and waiver service providers are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and well-being of the waiver participant and completing an incident report. The incident report shall be submitted to the Health Standards Section of BHSF within five working days of the incident.

#### **Definition of Services**

The following services will be made available to participants in this waiver by employees of Personal Attendant Provider agencies in half hour increments:

1. *Personal Care Attendant*—assistance with eating, bathing, dressing, personal hygiene, or activities of daily living.
2. *Household Supports*—services consisting of general household activities (meal preparation and routine household care) provided by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care for him or herself or others in the home.
3. *Personal Supervision (day)*—non-medical care, supervision and socialization, provided to a functionally impaired adult. Personal supervisors may assist or supervise the individual with such tasks as meal preparation, laundry and shopping, but do not perform these activities as discrete services as the household support worker does. The provision of this service does not entail hands-on nursing care.
4. *Personal Supervision (night)*—this type of supervision is to provide for the safety of individuals living alone who are limited in mobility or cognitive function to such an extent that they may not be able to preserve their own safety in dangerous situations.

#### **Reimbursement of Waiver Services**

Reimbursement shall not be made for waiver services provided prior to the BHSF approval of the care plan.

Bobby P. Jindal  
Secretary

9801#052

## RULE

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

Nursing Homes—Minimum Licensure  
Standards (LAC 48:I.Chapters 97, 98, and 99)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, adopts the following rule as authorized by R.S. 40:2009.1-2116.4. This rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The purpose of the nursing home licensing law and requirements is to provide for development, establishment, and enforcement of standards of care of individuals in nursing homes and for the construction, maintenance, and operation of nursing homes which will promote safe and adequate treatment of such individuals in nursing homes. Minimum standards for the licensing of nursing homes were last adopted in 1987 with the publication of these regulations as identified above under the *Louisiana Administrative Code*. Since that time there has been a tremendous expansion of federal regulations governing long-term care. Therefore, the department is now proposing to repeal current nursing home licensing regulations and establish new licensing regulations in order to assure that a high quality of care is provided to persons residing in nursing homes.

#### Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals current licensing regulations for all nursing homes in Louisiana and adopts the following regulations which are to be contained in LAC 48:I, Subpart 3, Chapters 97, 98, and 99.

#### Title 48

### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

#### Subpart 3. Licensure

#### Chapter 97. Nursing Homes

#### Subchapter A. General Provisions

#### §9701. Definitions

*Abuse*—the willful infliction of physical or mental injury or the causing of the deterioration of a resident by means including, but not limited to, sexual abuse, exploitation, or extortion of funds or other things of value to such an extent that his health, moral, or emotional well-being is endangered.

*Administrator*—any individual who is, or may be charged with, the general administration of a nursing home, and who has been licensed and registered by the Board of Examiners of Nursing Home Administrators in accordance with the provisions of R.S. 37:2501.

*Advanced-Practice Registered Nurse (APRN)*—a licensed registered nurse who is certified by a nationally-recognized certifying body as having an advanced nursing specialty, and who meets the criteria for an advanced-practice registered nurse as established by the Louisiana State Board of Nursing. An advanced-practice registered nurse shall include certified

nurse midwife, certified registered nurse anesthetist, clinical nurse specialist, or nurse practitioner.

*Ancillary Service*—a service such as, but not limited to, podiatry, dental, audiology, vision, physical therapy, speech pathology, occupational therapy, psychological, and social services.

*Applicant*—the legal entity that applies for the license to open, conduct, manage, or maintain a nursing home.

*Biological*—a preparation used in the treatment or prevention of disease that is derived from living organisms or their by-product.

*Change of Ownership*—any change in the legal entity responsible for the operation of the facility. Management agreements are generally not changes of ownership if the former owner continues to retain policy responsibility and approve or concur in decisions involving the nursing home's operation. However, if these ultimate legal responsibilities, authorities, and liabilities are surrendered and transferred from the former owner to the new manager, then a change of ownership has occurred.

*Charge Nurse*—an individual who is licensed by the state of Louisiana to practice as an RN or LPN and designated as a charge nurse by the nursing home.

*Chemical Restraint*—a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

*Controlled Dangerous Substance*—a drug, substance, or immediate precursor in Schedule I through V of R.S. 40:964.

*Dietary Manager*—a person who:

1. is a licensed dietitian; or
2. is a graduate of a dietetic technician program; or
3. has successfully completed a course of study, by correspondence or classroom, which meets the eligibility requirements for certification by the Dietary Manager's Association; or
4. has successfully completed a training course at a state approved school (vocational or university) which includes coursework in foods, food service supervision, and diet therapy. Documentation of an eight-hour course of formalized instruction in diet therapy, conducted by the employing facility's qualified dietitian, is permissible if the course meets only the foods, and food service supervision requirements; or
5. is currently enrolled in an acceptable course of not more than 12 months which will qualify an individual upon completion.

*Director of Nursing (DON)*—a registered nurse, licensed by the state of Louisiana, who directs and coordinates nursing services in a nursing home.

*Drug Administration*—an act in which a single dose of a prescribed drug or biological is given to a resident by an authorized person in accordance with all laws and regulations governing such acts. The complete act of administration entails removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container); verifying it with the physician's orders; giving the individual dose to the proper resident; monitoring the ingestion of the dose; and promptly recording the time and dose given.



*Drug Dispensing*—an act which entails the interpretation of an order for a drug or biological and, pursuant to the order, the proper selection, measuring, labeling, packaging, and issuance of the drug or biological for a resident or for a service unit of the facility by a licensed pharmacist, physician, or dentist.

*Fees*—remittance required by rules published by the department in *Louisiana Register*, June 20, 1989 (Volume 15, Number 6).

*Licensed Bed*—a bed set up, or capable of being set up, within 24 hours in a nursing home for the use of one resident.

*Licensed Dietitian*—a dietitian who is licensed to practice by the Louisiana Board of Examiners in Dietetics and Nutrition.

*Licensed Practical Nurse (LPN)*—an individual currently licensed by the Louisiana State Board of Practical Nurse Examiners to practice practical nursing in Louisiana.

*Major Alteration*—any repair or replacement of building materials and equipment which does not meet the definition of minor alteration.

*Medical Director*—a physician licensed in Louisiana who directs and coordinates medical care in a nursing home.

*Minor Alteration*—repair or replacement of building materials and equipment with materials and equipment of a similar type that does not diminish the level of construction below that which existed prior to the alteration. This does not include any alteration to the function or original design of the construction.

*Neglect*—the failure to provide the proper or necessary medical care, nutrition, or other care necessary for a resident's well-being.

*Nurses' Call System*—a system that audibly registers calls electronically from its place of origin (which means the resident's bed, toilet, or bathing facility) to the place of receivership (which means the nurses' station).

*Nursing Home*—any private home, institution, building, residence, or other place, serving two or more persons who are not related by blood or marriage to the operator, whether operated for profit or not, and including those places operated by a political subdivision of the state of Louisiana which undertakes, through its ownership or management, to provide maintenance, personal care, or nursing for persons who, by reason of illness or physical infirmity or age, are unable to properly care for themselves. The term does not include the following:

1. a home, institution, or other place operated by the federal government or agency thereof, or by the state of Louisiana;

2. a hospital, sanitarium, or other institution whose principal activity or business is the care and treatment of persons suffering from tuberculosis or from mental diseases;

3. a hospital, sanitarium, or other medical institution whose principal activity or business is the diagnosis, care, and treatment of human illness through the maintenance and operation of organized facilities therefore;

4. any municipal, parish, or private child welfare agency, maternity hospital, or lying-in home required by law to be licensed by some department or agency;

5. any sanitarium or institution conducted by and for Christian Scientists who rely on the practice of Christian Science for treatment and healing;

6. any nonprofit congregate housing program which promotes independent living by providing assistance with daily living activities such as cooking, eating, dressing, getting out of bed, and the like to persons living in a shared group environment who do not require the medical supervision and nursing assistance provided by nursing homes. No congregate housing program, except those licensed or operated by the state of Louisiana, shall:

- a. use the term "nursing home" or any other term implying that it is a licensed health care facility; or

- b. administer medications or otherwise provide any other nursing or medical service.

*Physical Restraint*—any physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

*Physician*—an individual currently licensed by the Louisiana State Board of Medical Examiners to practice medicine and/or surgery in Louisiana.

*Physician Assistant*—a person who is a graduate of a program accredited by the Council on Medical Education of the American Medical Association or its successors, or who has successfully passed the national certificate examination administered by the National Commission on the Certification of Physicians' Assistants, or its predecessors, and who is approved and licensed by the Louisiana State Board of Medical Examiners to perform protocol services under the supervision of a physician or group of physicians approved by the board to supervise such assistant.

*Registered Nurse (RN)*—an individual currently licensed by the Louisiana State Board of Nursing to practice professional nursing in Louisiana.

*Registered Pharmacist*—an individual currently licensed by the Louisiana State Board of Pharmacy to practice pharmacy in Louisiana.

*Resident*—an individual admitted to the nursing home by and upon the recommendation of a physician, and who is to receive the medical and nursing care ordered by the physician.

*Resident Activities Director*—an individual responsible for directing or providing the activity services of a nursing home.

*Restorative Nursing Care*—activities designed to resolve, diminish, or prevent the needs that are inferred from the resident's problem; including the planning, implementation and evaluation of said activities in accordance with the Louisiana State Board of Nursing Legal Standards of Nursing Practice.

*Social Service Designee*—an individual responsible for arranging or directly providing medically-related social services.

*Sponsor*—an adult relative, friend, or guardian of a resident who has an interest or responsibility in the resident's welfare.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:44 (January 1998).

### **§9703. Licensing Process**

A. No application for a nursing home license, renewal of a license, or change in the existing license will be considered unless such application is in writing, on a form supplied by the department, containing the name(s) and address(es) of the owner(s), and signed by either the applicant or his representative.

1. It shall be accompanied by the fees and documentary evidence required by these licensing requirements.

2. When the secretary finds that an application is in proper order, he/she will cause whatever investigations are necessary to be made.

3. He/She may also cause routine, periodic inspections to be made of licensed nursing homes and such special inspections and investigations as he/she may consider necessary.

B. The applicant or applicant's designee shall disclose to the department the name and address of all individuals with 5 percent or more ownership interest, and, in the instance where the nursing home is a corporation or partnership, the name and address of each officer or director, and board members.

C. If the nursing home is operated by a management company, or leased in whole or in part by another organization, the applicant or applicant's designee shall disclose to the department the name of the management firm and employer identification number, or the name of the leasing organization.

D. The nursing home shall complete the licensing application form and return it to the department at least 15 days prior to the initial licensing survey or expiration date of the current license, accompanied by a nonrefundable, per annum licensing fee as provided by law. All fees shall be submitted only by certified or company check, or U.S. postal money order, made payable to DHH. All state-owned facilities are exempt from fees. The nursing home shall reapply for licensing on an annual basis.

E. The nursing home shall only accept that number of residents for which it is licensed, unless prior written approval has been secured from the department.

F. If a nursing home is in substantial compliance with the licensing requirements for nursing homes and the nursing home licensing law, a license shall be issued by the department for a period of not more than 12 months, determined by the department. If a nursing home is not in substantial compliance with the licensing requirements for nursing homes and the nursing home licensing law, the department may issue a provisional license for a period of up to six months if there is no immediate and serious threat to the health and safety of residents.

G. For an increase in bed capacity as a result of new construction, renovations or alterations, a fee as provided by law shall be remitted to the department. Approval shall be granted after an on-site survey or through the submission of a signed and dated attestation to the compliance with these licensing requirements.

H. For a replacement license, when changes such as name change, address change, or bed reduction are requested, in

writing, by the nursing home, a fee as provided by law shall be remitted.

I. For a change in licensee or premises, the buyer(s) shall submit to the department a completed application for nursing home licensing with a licensing fee, as provided by law. Nursing home licensing is not transferable from one entity or owner(s) to another.

J. A processing fee, as provided by law, shall be submitted by the nursing home for issuing a duplicate facility license with no changes.

K. The license shall be conspicuously posted in the nursing home.

L. Licensing inspection visits should be a source of help and guidance to the management. During these inspection visits the representatives of the department, in addition to checking compliance by the home with fire, sanitation, diet and health regulations, will review with the management the overall plan for the care of residents and the personnel needs of the home and will also offer recommendations designed to improve the service of the home, unless contraindicated by a more stringent rule, regulation, or policy.

M. Exceptions to these Licensing Requirements

1. Where any requirement on an existing nursing home would impose a financial hardship but would not adversely affect the health and safety of any resident, the existing nursing home may submit a request for exception (waiver) to the department.

2. Where a more stringent requirement on an existing nursing home would impose an unreasonable hardship, the existing nursing home may submit a written request for exception, along with supporting documentation, to the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:46 (January 1998).

### **§9705. License Denial, Revocation; or Nonrenewal of License**

The department also may deny, suspend, or revoke a license where there has been substantial noncompliance with these requirements in accordance with the nursing home licensing law. If a license is denied, suspended, or revoked, an appeal may be requested as outlined in the nursing home licensing law.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:46 (January 1998).

### **§9707. Approval of Plans**

A. All new construction, other than minor alterations, shall be done in accordance with the specific requirements of the Office of the State Fire Marshal and the Bureau of Engineering and Consulting Services of the Department of Health and Hospitals, covering new construction in nursing homes, including submission of preliminary plans and the submission of final work drawings and specifications to each of these agencies.

B. No new nursing home shall hereafter be constructed, nor shall major alterations be made to existing nursing homes, without prior written approval, and unless in accordance with plans and specifications approved in advance by the Bureau of Engineering and Consulting Services of the Department of Health and Hospitals and the Office of the State Fire Marshal. The review and approval of plans and specifications shall be made in accordance with these licensing requirements for nursing homes and the *State of Louisiana Sanitary Code*.

C. Before any new nursing home is licensed, or before any alteration or expansion of a licensed nursing home can be approved, the applicant must furnish one complete set of plans and specifications to the Bureau of Engineering and Consulting Services of the Department of Health and Hospitals and one complete set of plans and specifications to the Office of the State Fire Marshal, together with fees and other information as may be required.

1. Plans and specifications for new construction, other than minor alterations, shall be prepared by or under the direction of a licensed architect and/or a qualified licensed engineer.

2. No residential conversions will be considered for a nursing home license.

D. In the event that submitted materials do not satisfactorily comply with the aforementioned publications, the Department of Health and Hospitals shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.

E. Notice of satisfactory review from the Department of Health and Hospitals and the Office of the State Fire Marshal 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, regulations, ordinances, codes, or rules of any responsible agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:46 (January 1998).

#### **§9709. Fire Protection**

All nursing homes 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 the State Fire Marshal.

1. It shall be the primary responsibility of the Office of the State Fire Marshal to determine if applicants are complying with those requirements.

2. No initial license shall be issued without the applicant furnishing a certificate from the Office of the State Fire Marshal that such applicant is complying with their provisions.

3. A provisional license may be issued to the applicant if the Office of the State Fire Marshal issues the applicant a conditional certificate.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:47 (January 1998).

#### **§9711. Sanitation and Patient Safety**

All nursing facilities required to be licensed by the law shall comply with the rules, sanitary code and enforcement policies as promulgated by the Office of Public Health.

1. It shall be the primary responsibility of the Office of Public Health to determine if applicants are complying with those requirements.

2. No initial license shall be issued without the applicant furnishing a certificate from the Office of Public Health that such applicant is complying with their provisions.

3. A provisional license may be issued to the applicant if the Office of Public Health issues the applicant a conditional certificate.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:47 (January 1998).

#### **Subchapter B. Organization and General Services**

##### **§9713. Delivery of Services**

A nursing home shall be administered in a manner that promotes the highest level of functioning and well-being of each resident.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:47 (January 1998).

##### **§9715. Governing Body**

A. The nursing home shall have a governing body that is legally responsible for establishing and implementing policies regarding the management and operation of the nursing home. The governing body shall develop and approve policies and procedures which define and describe the scope of services offered. They shall be revised as necessary and reviewed at least annually.

B. The governing body shall be responsible for the operation of the nursing home.

C. The governing body shall appoint, in writing, a licensed administrator responsible for the management of the nursing home.

D. The governing body shall notify the department, in writing by certified mail, when a change occurs in the administrator position within 30 calendar days after the change occurs. The notice shall include the identity of the individual and the specific date the change occurred.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:47 (January 1998).

##### **§9717. Administration**

A. There shall be a full-time Louisiana licensed nursing facility administrator. The administrator shall be engaged in the act of administration, and the activity shall be the major function of the person performing the act.

B. Another full-time employee shall be authorized, in writing, to act in the administrator's behalf when he/she is absent.

C. The administrator shall notify the department in writing when a change occurs in the director of nursing position within 30 calendar days after the change occurs. The notice shall include the identity of the individual and the specific date the change occurred.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:47 (January 1998).

#### **§9719. Personnel**

A. There shall be sufficient qualified personnel to properly operate each department of the nursing home to assure the health, safety, proper care, and treatment of the residents.

1. Time schedules shall be maintained indicating the numbers and classification of all personnel, including relief personnel, who work on each tour of duty. The time schedules shall reflect all changes so as to indicate who actually worked.

2. Should there be a need to commingle the nursing service staff with other personnel:

a. nurse aides shall not work in food preparation after having provided personal care to residents;

b. laundry and housekeeping personnel shall not provide nursing care functions to residents;

c. nursing service personnel may perform housekeeping duties only after normal duty hours of the housekeeping staff or when a situation arises that may cause an unsafe situation.

B. Personnel records shall be current and available for each employee and shall contain sufficient information to assure that they are assigned duties consistent with his or her job description and level of competence, education, preparation, and experience.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:48 (January 1998).

#### **§9721. Criminal History Provisions; Screening**

A. Nursing homes shall have criminal history checks performed on nonlicensed personnel to include CNAs, housekeeping staff, activity workers, and social service personnel in accordance with R.S. 40:1300.5 et seq.

B. All personnel requiring licensure to provide care shall be licensed to practice in the state of Louisiana. Credentials of all licensed full-time, part-time, and consultant personnel shall be verified on an annual basis, in writing, by a designated staff member.

C. TB Testing. All personnel, including volunteer workers, involved in direct resident care, shall adhere to Section 3, Chapter II of the *State of Louisiana Sanitary Code*, Sections 2:022-2:025-1 and 2:026.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:48 (January 1998).

#### **§9723. Policies and Procedures**

A. There shall be written policies and procedures:

1. available to staff, residents, and/or sponsors governing all areas of care and services provided by the nursing home;

2. ensuring that each resident receives the necessary care and services to promote the highest level of functioning and well-being of each resident;

3. developed with the advice of a group of professional personnel consisting of at least a licensed physician, the administrator, and the director of nursing service;

4. approved by the governing body;

5. revised, as necessary, but reviewed by the professional group at least annually;

6. available to admitting physicians; and

7. reflecting awareness of, and provision for, meeting the total medical and psychosocial needs of residents, including admission, transfer, and discharge planning; and the range of services available to residents, including frequency of physician visits by each category of residents admitted.

B. The administrator, or his designee, is responsible, in writing, for the execution of such policies.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:48 (January 1998).

#### **§9725. Assessments and Care Plans**

A. An initial assessment of the resident's needs/problems shall be performed and documented in each resident's clinical record by a representative of the appropriate discipline.

B. The assessment shall be used to develop the resident's plan of care.

C. The assessment and care plan shall be completed within 21 days of admission.

D. The care plan shall be revised, as necessary, and reviewed, at least annually, by the personnel involved in the care of the resident.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:48 (January 1998).

#### **§9727. Staff Orientation, Training and Education**

A. New employees shall have an orientation program of sufficient scope and duration to inform the individual about his/her responsibilities and how to fulfill them.

B. The orientation program shall include at least a review of policies and procedures, job description, and performance expectations prior to the employee performing his/her responsibilities.

C. A staff development program shall be conducted by competent staff and/or consultants and planned based upon employee performance appraisals, resident population served by the nursing home, and as determined by facility staff. All employees shall participate in in-service education programs which are planned and conducted for the development and improvement of their skills.

D. The in-service training shall include at least problems and needs common to the age of those being served; prevention

and control of infections; fire prevention and safety; emergency preparedness; accident prevention; confidentiality of resident information; and preservation of resident dignity and respect, including protection of privacy and personal and property rights.

E. The facility's in-service training shall be sufficient to ensure the continuing competence of the staff but must be provided no less than 12 hours per year.

F. Records of in-service training shall be maintained indicating the content, time, names of employees in attendance, and the name of the presenter.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:48 (January 1998).

### **§9729. Emergency Preparedness**

A. The nursing home shall have an emergency preparedness plan (which conforms to the Office of Emergency Preparedness model plan) designed to manage the consequences of natural disasters or other emergencies that disrupt the nursing home's ability to provide care and treatment or threaten the lives or safety of the nursing home residents.

B. As a minimum, the program shall have a written plan that describes:

1. the evacuation of residents to a safe place, either within the nursing home or to another location;
2. the delivery of essential care and services to nursing home residents, whether residents are housed off-site or when additional residents are housed in the nursing home during an emergency;
3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the nursing home or at another location;
4. a plan for coordinating transportation services required for evacuating residents to another location; and
5. assurance that the resident's family or sponsor is notified if resident is evacuated to another location.

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

D. The nursing home's plan shall be reviewed and approved by the parish Office of Emergency Preparedness, utilizing appropriate community-wide resources.

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

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

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

### **§9731. Complaint Process**

A. Provisions for Complaints. In accordance with R.S. 40:2009.13 et seq., the following requirements are established for receiving, evaluating, investigating, and correcting grievances pertaining to resident care in licensed nursing

homes. They also provide for mandatory reporting of abuse and neglect in nursing homes.

#### **B. Nursing Home Complaints, Procedure, Immunity**

1. Any person having knowledge of the alleged abuse or neglect of a resident of a nursing home; or who has knowledge that a state law, licensing requirement, rule, or regulation, or correction order promulgated by the department, or any federal certification rule pertaining to a nursing home has been violated; or who otherwise has knowledge that a nursing home resident is not receiving care and treatment to which he is entitled under state or federal laws, may submit a complaint regarding such matter to the secretary (Department of Health and Hospitals). The complaint shall be submitted to the Health Standards Section of DHH in writing, by telephone, or by personal visit where the complainant will complete and sign a form furnished by the member of the secretary's staff receiving the complaint.

2. The secretary shall designate a staff member whose responsibility shall be to assure that all complaints received are referred to the appropriate office of the department (Health Standards Section).

3. If the complaint involves an alleged violation of any criminal law pertaining to nursing homes, the secretary shall refer the complaint to the appropriate office.

4. If the complaint involves any other matter, the secretary shall refer the complaint to the appropriate office for investigation in accordance with this Section.

5. Any person who, in good faith, submits a complaint pursuant to this Section shall have immunity from any civil liability that otherwise might be incurred or imposed because of such complaint. Such immunity shall extend to participation in any judicial proceeding resulting from the complaint.

#### **C. Procedure for Investigation by the Office; Confidentiality of Complaints**

1. The office of the department which has received the complaint from the secretary shall review the complaint and determine whether there are reasonable grounds for an investigation. No complaint shall be investigated if:

- a. in the opinion of the office, it is trivial or not made in good faith;
- b. it is too out dated and delayed to justify present investigation; or
- c. the complaint is not within the investigating authority of the office.

2. If the office determines that grounds for an investigation do not exist, it shall notify the complainant of its decision and the reasons within 15 work days after receipt of such complaint.

3. If grounds for an investigation do exist, the office shall initiate an investigation of such complaint and make a report to the complainant on its findings within 30 work days after completion of the complaint investigation.

4. The substance of the complaint shall be given to the nursing home no earlier than at the commencement of the investigation of the complaint.

5. When the substance of the complaint is furnished the nursing home, it shall not identify the complainant or the patient unless he/she consents, in writing or in a documented

telephone conversation with an employee, to the disclosure. If the disclosure is considered essential to the investigation or if the investigation results in a judicial proceeding, the complainant shall be given the opportunity to withdraw the complaint.

#### D. Investigation Report

1. The investigation report of the department shall state whether any nursing home licensing law, or any licensing requirement, rule, regulation, or correction order of the Department of Health and Hospitals, or any standard relating to the health, safety, care, or treatment of residents in nursing homes has been violated.

a. If such violation is found to exist, the appropriate departmental staff shall immediately provide notice of such violation to the secretary.

b. The report shall also contain a deficiency statement to the nursing home. A copy of the report shall be sent by certified mail or hand-delivered to the complainant and to the nursing home.

2. The deficiency statement shall describe the violation; list the rule or law violated; and solicit corrective actions to be taken by the nursing home.

3. A nursing home which is ordered to correct deficiencies may file a written request that the department review the corrective action taken by the home and, if necessary, reinspect the home.

a. The department shall comply with the request in a timely manner.

b. If no such request is received, the department shall review the steps taken by the home in order to comply with the corrective order and, if necessary, reinspect the home on the final date fixed for completion of the correction of the violation.

4. If the violation is found to continue to exist on the correction date, the office shall notify the appropriate department to take further action as indicated applicable by state regulations.

#### E. Hearing

1. A complainant or nursing home who is dissatisfied with the department's determination or investigation may request a hearing.

2. A request for a hearing shall be submitted, in writing, to the secretary within 30 days after the department's report has been mailed in accordance with the provisions of R.S. 40:2009.15A(1).

3. Notice of the time and place fixed for the hearing shall be sent to the complainant and the nursing home.

4. All appeal procedures shall be conducted in accordance with the Administrative Procedure Act.

F. Prohibition Against Retaliation. No discriminatory or retaliatory action shall be taken by any health care facility or government agency against any person or client by whom or for whom any communication was made to the department or unit, provided the communication is made in good faith for the purpose of aiding the office or unit to carry out its duties and responsibilities.

G. Notice of the Complaint Procedure. Notice of the complaint procedure, complete with the name, address, and telephone number of the Health Standards Section of the Office

of the Secretary of the Department of Health and Hospitals, shall be posted conspicuously in the nursing home at places where residents gather.

H. In accordance with R.S. 14:403.2, 14:93.3, 14:93.4, and 14:93.5, all nursing homes shall adhere to the adult protective services laws.

#### I. Duty to Make Complaints; Penalty; Immunity

1. Any person who is engaged in the practice of medicine, social services, facility administration, psychological or psychiatric treatment; or any registered nurse, licensed practical nurse, or nurse's aid, who has actual knowledge of the abuse or neglect of a resident of a health care facility shall, within 24 hours, submit a complaint to the secretary or inform the unit or local law enforcement agency of such abuse or neglect.

2. Any person who knowingly or willfully violates the provisions of this Section shall be fined not more than \$500; or imprisoned for not more than two months; or both.

3. Any person who, in good faith, submits a complaint pursuant to this Section shall have immunity from any civil liability that otherwise might be incurred or imposed because of such complaint. Such immunity shall extend to participation in any judicial proceeding resulting from the complaint.

4. Any person, other than the person alleged to be responsible for the abuse or neglect, reporting pursuant to this Section in good faith, shall have immunity from any civil liability that otherwise might be incurred or imposed because of such report. Such immunity shall extend to participation in any judicial proceeding resulting from such report.

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

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

#### Subchapter C. Resident Rights

##### §9733. Statement of Rights and Responsibilities

A. In accordance with R.S. 40:2010.8 et seq., all nursing homes shall adopt and make public a statement of the rights and responsibilities of the residents residing therein and shall treat such residents in accordance with the provisions of the statement. The statement shall assure each resident the following:

1. the right to civil and religious liberties including, but not limited to, knowledge of available choices; the right to independent personal decision; and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these civil and religious rights;

2. the right to private and uncensored communications including, but not limited to, receiving and sending unopened correspondence; access to a telephone; visitation with any person of the resident's choice; and overnight visitation outside the facility with family and friends in accordance with nursing home policies and physician's orders without the loss of his bed;

a. nursing home visiting hours shall be flexible, taking into consideration special circumstances such as out-of-town visitors and working relatives or friends;

b. with the consent of the resident and in accordance with the policies approved by the Department of Health and

Hospitals, the home shall permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure and planning programs, and members of the clergy access to the home during visiting hours for the purpose of visiting with and providing services to any resident;

3. the right to present grievances on behalf of himself or others to the nursing home's staff or administrator, to governmental officials, or to any other person; to recommend changes in policies and services to nursing home personnel; and to join with other residents or individuals within or outside the home to work for improvements in resident care, free from restraint, interference, coercion, discrimination or reprisal. This right includes access to the resident's sponsor and the Department of Health and Hospitals; and the right to be a member of, to be active in, and to associate with advocacy or special interest groups;

4. the right to manage his own financial affairs or to delegate such responsibility to the nursing home, but this delegation may be only to the extent of the funds held in trust for the resident by the home. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident and his sponsor, if requested. A copy shall be retained in the resident's records on file in the home;

5. the right to be fully informed, in writing and orally, prior to or at time of admission and during his stay, of services not covered by the basic per diem rates and of bed reservation and refund policies of the home;

6. the right to be adequately informed of his medical condition and proposed treatment, unless otherwise indicated by the resident's physician; to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident's physician; and to be informed of the consequences of such actions;

7. the right to receive adequate and appropriate health care and protective and support services, including services consistent with the resident care plan, with established and recognized practice standards within the community and with rules promulgated by the Department of Health and Hospitals;

8. the right to have privacy in treatment and in caring for personal needs:

a. to have closed room doors, and to have facility personnel knock before entering the room, except in case of an emergency or unless medically contraindicated;

b. to have confidentiality in the treatment of personal and medical records;

c. to be secure in storing and using personal possessions, subject to applicable state and federal health and safety regulations and the rights of other residents; and

d. privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance;

9. the right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and oral explanations of the services provided by the home, including statements and explanations required to be offered on an as-needed basis;

10. the right to be free from mental and physical abuse and from physical and chemical restraints, except those restraints authorized by the attending physician for a specified and limited period of time or those necessitated by an emergency:

a. in case of an emergency, restraint may only be applied by a qualified licensed nurse, who shall set forth, in writing, the circumstances requiring the use of the restraint, and, in case of a chemical restraint, the attending physician shall be consulted immediately thereafter;

b. restraints shall not be used in lieu of staff supervision or merely for staff convenience or resident punishment, or for any reason other than resident protection or safety;

11. the right to be transferred or discharged:

a. a resident can be transferred or discharged only if necessary for his welfare and if his needs cannot be met in the facility; his health has improved sufficiently so that he no longer needs the services provided by the facility; the safety of individuals in the facility is endangered; the health of individuals in the facility would otherwise be endangered; he has failed, after reasonable and appropriate notice, to pay or have paid for a stay at the facility; or the facility ceases to operate;

b. both the resident and his legal representative or interested family member, if known and available, have the right to be notified, in writing, in a language and manner they understand, of the transfer and discharge. The notice must be given no less than 30 days in advance of the proposed action, except that the notice may be given as soon as is practicable prior to the action in the case of an emergency. In facilities not certified to provide services under Title XVIII or Title XIX of the Social Security Act, the advance notice period may be shortened to 15 days for nonpayment of a bill for a stay at the facility;

c. the resident, or his legal representative or interested family member, if known and available, has the right to appeal any transfer or discharge to the Department of Health and Hospitals, which shall provide a fair hearing in all such appeals;

d. the facility must ensure that the transfer or discharge is effectuated in a safe and orderly manner. The resident and his legal representative or interested family member, if known and available, shall be consulted in choosing another facility if facility placement is required;

12. the right to select a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense; and to obtain information about, and to participate in, community-based activities and programs, unless medically contraindicated, as documented by the attending physician in the resident's medical record, and such participation would violate infection control laws or regulations;

13. the right to retain and use personal clothing and possessions, as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated, as documented by the attending physician in the resident's medical record. Clothing need not be provided

to the resident by the home, except in emergency situations. If provided, it shall be of reasonable fit;

14. the right to have copies of the nursing home's rules and regulations and an explanation of the resident's responsibility to obey all reasonable rules and regulations of the nursing home and of his responsibility to respect the personal rights and private property of other residents;

15. the right to be informed of the bed reservation policy for a hospitalization:

a. the nursing home shall inform a private pay resident and his sponsor that his bed shall be reserved for any single hospitalization for a period up to 30 days, provided the nursing home receives reimbursement;

b. notice shall be provided within 24 hours of the hospitalization;

16. the right to receive a prompt response to all reasonable requests and inquiries;

17. the right of the resident to withhold payment for physician visitation if the physician did not examine the resident;

18. the right to refuse to serve as a medical research subject without jeopardizing access to appropriate medical care;

19. the right to use tobacco, at his own expense, under the home's safety rules and under applicable laws and rules of the state, unless the facility's written policies preclude smoking in designated areas;

20. the right to consume a reasonable amount of alcoholic beverages, at his own expense, unless:

a. not medically advisable, as documented in his medical record by the attending physician; or

b. unless alcohol is contraindicated with any of the medications in the resident's current regime; or

c. unless expressly prohibited by published rules and regulations of a nursing home owned and operated by a religious denomination which has abstinence from the consumption of alcoholic beverages as a part of its religious belief;

21. the right to retire and rise in accordance with his reasonable requests, if he does not disturb others and does not disrupt the posted meal schedules and, upon the home's request, if he remains in a supervised area unless retiring and rising in accordance with the resident's request is not medically advisable, as documented in his medical record by the attending physician;

22. the right to have any significant change in his health status immediately reported to him and his legal representative or interested family member, if known and available, as soon as such a change is known to the home's staff.

B. A sponsor may act on a resident's behalf to assure that the nursing home does not deny the resident's rights under the provisions of R.S. 40:2010.6 et seq., and no right enumerated therein may be waived for any reason whatsoever.

C. Each nursing home shall provide a copy of the statement required by R.S. 40:2010.8(A) to each resident and sponsor upon or before the resident's admission to the home and to each staff member of the home. The statement shall also advise the resident and his sponsor that the nursing home is not

responsible for the actions or inactions of other persons or entities not employed by the facility, such as the resident's treating physician, pharmacists, sitter, or other such persons or entities employed or selected by the resident or his sponsor. Each home shall prepare a written plan and provide appropriate staff training to implement the provisions of R.S. 40:2010.6 et seq., including but not limited to, an explanation of the following:

1. the residents' rights and the staff's responsibilities in the implementation of those rights;

2. the staff's obligation to provide all residents who have similar needs with comparable services, as required by state licensing standards.

D. Any violations of the residents' rights set forth in R.S. 40:2010.6 et seq. shall constitute grounds for appropriate action by the Department of Health and Hospitals.

1. Residents shall have a private right of action to enforce these rights, as set forth in R.S. 40:2010.9. The state courts shall have jurisdiction to enjoin a violation of resident's rights and to assess fines for violations, not to exceed \$100 per individual violation.

2. In order to determine whether a home is adequately protecting residents' rights, inspection of the home by the Department of Health and Hospitals shall include private, informal conversations with a sample of residents to discuss residents' experiences within the home with respect to the rights specified in R.S. 40:2010.6 et seq., and with respect to compliance with departmental standards.

E. Any person who submits or reports a complaint concerning a suspected violation of residents' rights or concerning services or conditions in a home or health care facility or who testifies in any administrative or judicial proceedings arising from such complaint shall have immunity from any criminal or civil liability therefor, unless that person has acted in bad faith with malicious purpose, or if the court finds that there was an absence of a justiciable issue of either law or fact raised by the complaining party.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:50 (January 1998).

#### **Subchapter D. Sanctions and Appeal Procedures**

##### **§9735. Authority and Scope**

Any person or entity found to be in violation of any provision of R.S. 40:2009.1 through 40:2009.11 may be sanctioned by revocation of license, nonrenewal of license, or by civil fines as mandated by state law.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:52 (January 1998).

##### **§9737. Considerations**

The secretary shall impose the sanction(s) which will bring the nursing home into compliance in the most efficient and effective manner, with the care and well-being of the residents being the paramount consideration. The secretary's decision shall be based on an assessment of some or all of the following factors:



1. whether the violations pose an immediate threat to the health or safety of the residents;
2. the duration of the violations;
3. whether the violation (or one that is substantially similar) has previously occurred during the last three consecutive surveys.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:52 (January 1998).

**§9739. Repeat Violations**

The Department of Health and Hospitals shall have the authority to determine whether a violation is a repeat violation and shall inform the facility in its notice of that determination. Violations may be considered repeat violations by the Department of Health and Hospitals if the one or more of the following conditions are found to exist.

1. Where the Department of Health and Hospitals has established the existence of a violation as of a particular date, and the violation is one that may be reasonably expected to continue until corrective action is taken, the department may elect to treat said continuing violation as a repeat violation subject to appropriate fines for each day following the date on which the initial violation is established, until such time as there is evidence establishing a date by which the violation was corrected.

2. Where the Department of Health and Hospitals has established the existence of a violation, and another violation which is the same or substantially similar to the previous violation occurs within 18 months, the subsequent violation and all other violations thereafter shall be considered repeat violations subject to fines and other sanctions appropriate for repeat violations.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:53 (January 1998).

**§9741. Notice and Appeal Procedure**

A. Unless otherwise indicated, any sanction may be administratively appealed in the manner described in the nursing home law in Section 2009.11.

B. Notice to Facility of Violation. When the Department of Health and Hospitals has reasonable cause to believe, through an on-site survey, a complaint investigation, or other means that there exists or has existed a threat to the health, safety, welfare, or rights of a nursing facility resident, the department shall give notice of the violation(s) in the following manner.

1. The head of the survey team shall conduct an exit conference and give the facility administrator or his designee the preliminary finding of fact and the possible violations before leaving the facility.

2. The department shall follow the discussion with confirmed written notice, given by certified mail or hand delivery, to the facility administrator.

3. The department's written notice of deficiencies shall be consistent with the findings delineated at the conference and shall:

- a. specify the violation(s);
- b. cite the legal authority which established such violation(s);
- c. cite any sanctions assessed for each violation;
- d. inform the administrator that the facility has 10 days from receipt of notice, sent by certified mail or hand delivery, within which to request a reconsideration of the proposed agency action;
- e. inform the administrator of the facility that the consequences of failing to timely request an administrative appeal will be that the departmental determination will be considered final, and that no further administrative or judicial review will be had;
- f. inform the administrator of the facility if the department has elected to regard the violation(s) as repeat violation(s) or as continuing violation(s) and the manner in which sanctions will be imposed.

C. The facility may request administrative reconsideration of the department's findings. This request must be made, in writing, within 10 days after receipt of the initial notice from the state survey agency. This reconsideration of findings shall be conducted by designated employees of the department who did not participate in the initial decision to cite the deficiencies. Reconsideration shall be made on the basis of documents before the designated employees and shall include the survey report and statement of deficiencies and all documentation the facility submits to the department at the time of its request for reconsideration. Correction of a deficiency shall not be a basis for reconsideration. Oral presentations can be made by department spokesmen and facility spokesmen. This process is not in lieu of the appeals process. The designated employees shall have authority only to affirm the survey findings; revoke some or all of the cited deficiencies; or request additional information from either the department or the facility. The department shall notify the facility of its decision within three working days after the oral presentation and receipt of all requested documentation. Participation in the reconsideration does not delay the imposition of recommended remedies.

D. If the facility requests an administrative appeal, such request shall:

1. state which violation(s) the facility contests and the specific reasons for disagreement;
2. be submitted to the Department of Health and Hospitals within 30 days of receipt of the secretary's decision on the final agency action by certified mail or hand delivery;

E. The administrative hearing shall be limited to those issues specifically contested and shall not include any claim or argument that the violation(s) have been corrected. Any violations not specifically contested shall become final, and sanctions shall be enforced at the expiration of the time for appeal. All violations/sanctions not contested shall become final at the expiration of the appeal request time period.

F. If the facility does not request an administrative appeal in a timely manner or does not submit satisfactory evidence to rebut the department's findings of a violation, the decision to impose sanctions will be final and the secretary shall have the authority to enforce sanctions, as provided in these regulations.

G. The department may institute all necessary civil court action to collect fines imposed and not timely appealed. No nursing facility may claim fines as reimbursable costs, nor increase charges to residents as a result of such fines. Interest shall begin to accrue at the current judicial rate on the day following the date on which any fines become due and payable.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:53 (January 1998).

**§9743. Civil Money Penalties (Fines)**

A. The following listed civil fines pertaining to classified violations may be assessed by the secretary against nursing homes. In the case of class "A" violations, the following civil fines shall be assessed. In the cases of class "B," "C," "D," or "E" violations, the secretary, in his discretion, may elect to assess the following civil fines or may allow a specified period of time for correction of said violation. For class "D" and "E" violations, the facility will be given notice of the fine at the time of the first violation and may be given an opportunity to demonstrate compliance before the fine becomes final.

1. If compliance is demonstrated on the follow-up visit, payment of the fine may be waived. In all instances the violation is counted and recorded.

2. If compliance is not demonstrated at the next visit, the penalty for a repeat violation will be assessed. No facility shall be penalized because of a physician's or consultant's nonperformance beyond the facility's control or if the violation is beyond the facility's control, if the situation and the efforts to correct it are clearly documented.

3. It is not the intent that every violation found on a survey, inspection, or related visit should be accompanied by an administrative penalty.

B. Class "A" violations are subject to a civil fine which shall not exceed \$2,500 for the first violation. A second class "A" violation occurring within an 18-month period from the first violation shall not exceed \$5,000 per day.

C. Class "B" violations are subject to a civil fine which shall not exceed \$1,500 for the first violation. A second Class "B" violation occurring within an 18-month period from the first violation shall not exceed \$3,000 per day.

D. Class "C" violations are subject to a civil fine which shall not exceed \$1,000 for the first violation. A second Class "C" violation occurring within an 18-month period from the first violation shall not exceed \$2,000 per day.

E. Class "D" violations are subject to a civil fine which shall not exceed \$100 for the first violation. Each subsequent Class "D" violation within an 18-month period from the first violation shall not exceed \$250 per day.

F. Class "E" violations are subject to a civil fine which shall not exceed \$50 for the first violation. Each subsequent Class "E" violation occurring within an 18-month period from the first violation shall not exceed \$100 per day.

G. The total amount of fines assessed for violations determined in any one month shall not exceed \$5,000, except that the aggregate fines assessed for Class "A" or "B" violations shall not exceed \$10,000 in any one month.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:54 (January 1998).

**§9745. Classes of Violations Defined**

A. *Class "A" Violations*—those violations which create a condition or occurrence relating to the operation and maintenance of a nursing home which result in death or serious harm to a resident.

B. *Class "B" Violations*—those violations which create a condition or occurrence relating to the operation and maintenance of a nursing home which create a substantial probability that death or serious physical harm to a resident will result from the violation.

C. *Class "C" Violations*—conduct, acts, or omissions which do not result in death or serious physical harm to a resident or the substantial probability thereof but create a condition or occurrence relating to the operation and maintenance of a nursing home that create a potential for harm by directly threatening the health, safety, rights or welfare of a resident are Class "C" violations.

D. *Class "D" Violations*—those violations which are related to administrative and reporting requirements that do not directly threaten the health, safety, rights, or welfare of a resident.

E. *Class "E" Violations*—Class "E" violations are defined as the failure of any nursing home to submit a statistical or financial report in a timely manner as required by regulations. The failure to timely submit a statistical or financial report shall be considered a separate Class "E" violation during any month or part thereof in noncompliance.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:54 (January 1998).

**§9747. Collection of Civil Fines Assessed**

A. Civil fines assessed shall be final if:

1. no timely or proper appeal was requested;
2. the facility admits the violations and agrees to pay; and
3. the administrative hearing is concluded with findings of violations and time for seeking judicial review has expired.

B. When civil fines become final, they shall be paid in full within 10 days of their commencement unless the department allows a payment schedule in light of a documented financial hardship. Such documentation shall be submitted within the 10-day period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:54 (January 1998).

**§9749. Revocation of License**

A. The secretary of the Department of Health and Hospitals may deny an application for a license or refuse to renew a license or may revoke an outstanding license when an investigation reveals that the applicant or licensee is in nonconformance with or in violation of the provisions of R.S. 40:2009.6, provided that in all such cases, the secretary shall

furnish the applicant or licensee 30 calendar days written notice specifying reasons for the action.

B. The secretary, in a written notice of denial, nonrenewal, or revocation of a license, shall notify the applicant or licensee of his right to file a suspensive appeal with the Office of the Secretary within 30 calendar days from the date the notice, as described in this Subchapter, is received by him. This appeal or request for a hearing shall specify, in detail, reasons why the appeal is lodged and why the appellant feels aggrieved by the action of the secretary.

C. When any appeal, as described in this Subchapter, is received by the secretary, if timely filed, he shall appoint an impartial three-member board to conduct a hearing on the appeal, at such time and place as such members deem proper, and after such hearing, to render a written opinion on the issues presented at the hearing. The written decision or opinion of a majority of the members conducting the hearing shall constitute final administrative action on the appeal.

D. Any member of said board or the secretary shall have power to administer oaths and to subpoena witnesses on behalf of the board or any party in interest and compel the production of books and papers pertinent to any investigation or hearing authorized by this Subchapter, provided that in all cases witness fees and transportation and similar hearing costs shall be paid by the appellant or by the Department of Health and Hospitals if the appellant is found innocent of charges. Any person, having been served with a subpoena, who shall fail to appear in response to the subpoena or fail or refuse to answer any question or fail to produce any books or papers pertinent to any investigation or hearing or who shall knowingly give false testimony therein shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than \$100, nor more than \$500, or by imprisonment of not less than one month nor more than six months, or by both such fine and imprisonment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:54 (January 1998).

## **Chapter 98. Nursing Homes**

### **Subchapter A. Physician Services**

#### **§9801. Medical Director**

A. The nursing home shall designate, pursuant to a written agreement, a physician currently holding an unrestricted license to practice medicine by the Louisiana State Board of Medical Examiners to serve as medical director.

B. The medical director shall serve as consultant regarding medical care policies and procedures.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:55 (January 1998).

#### **§9803. Physician Supervision**

A. A resident shall be admitted to the nursing home only with an order from a physician licensed to practice in Louisiana.

1. Each resident shall remain under the care of a physician licensed to practice in Louisiana and shall have freedom of choice in selecting his/her attending physician.

2. The nursing home shall be responsible for assisting in obtaining an attending physician, with the resident's or sponsor's approval, when the resident or sponsor is unable to find one.

B. Another physician supervises the medical care of residents when their attending physician is unavailable.

C. Any required physician task may also be satisfied when performed by an advanced-practice registered nurse or physician assistant who is not an employee of the nursing home, but who is working under the direction and supervision of a physician.

D. The nursing home shall provide or arrange for the provision of physician services 24 hours a day, in case of emergency.

E. The name and telephone numbers of the attending physicians and the physicians to be called in case of emergency, when the attending physician is not available, shall be posted at each nursing station. Upon request, the telephone numbers of the attending physician or his/her replacement in case of emergency shall be provided to the resident, guardian, or sponsor.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:55 (January 1998).

#### **§9805. Physician Visits and Responsibilities**

A. At the time each resident is admitted, the nursing home shall have attending physician's orders for the resident's immediate care. At a minimum, these orders shall consist of dietary, drugs (if necessary), and routine care to maintain or improve the resident's functional abilities.

B. If the orders are from a physician other than the resident's attending physician, they shall be communicated to the attending physician and verification entered into the resident's clinical record by the nurse who took the orders.

C. A physical examination shall be performed by the attending physician within 72 hours after admission, unless such examination was performed within 30 days prior to admission, with the following exceptions:

1. if the physical examination was performed by another physician, the attending physician may attest to its accuracy by countersigning it and placing a copy in the resident's record; or

2. if the resident is transferring from another nursing home with the same attending physician, a copy of the previous physical examination may be obtained from the transferring facility with the attending physician initialing its new date. The clinical history and physical examination, together with diagnoses shall be in the resident's medical record.

D. Each resident shall be seen by his/her attending physician at intervals to meet the medical needs of the resident, but at least annually.

E. At each visit, the attending physician shall write, date and sign progress notes.

F. The physician's treatment plan (physician's orders) shall be reviewed by the attending physician at least once annually.

G. Physician telephone/verbal orders shall be received only by physicians, pharmacists, or licensed nurses. These orders shall be reduced to writing in the resident's clinical record and signed and dated by the authorized individual receiving the order. Telephone/verbal orders shall be countersigned by the physician within seven days.

H. Use of signature stamps by physicians is allowed when the signature stamp is authorized by the individual whose signature the stamp represents. The administrative office of the nursing home shall have on file a signed statement to the effect that the physician is the only one who has the stamp and uses it. There shall be no delegation of signature stamps to another individual.

I. At the option of the nursing home attending physician, any required physician task in a nursing home may also be satisfied when performed by an advanced-practice registered nurse when these tasks are within their realm of education and practice, or physician assistant when these tasks are so identified within their protocols, and who is not an employee of the nursing home, but who is working under the direction and supervision of an attending physician.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:55 (January 1998).

#### **§9807. Standing Orders**

A. Physician's standing orders are permissible but shall be individualized, taking into consideration such things as drug allergies, sex-specific orders, and the pertinent physical condition of the resident.

B. Over-the-counter drugs are to be utilized on a physician's standing orders. Controlled or prescription drugs except those commonly used in routine situations, should not be on standing orders and must be an individual order reduced to writing on the physician's order sheet as either a routine or pro re nata (prn) order. Each order shall include the following:

1. name of the medication;
2. strength of the medication;
3. specific dose of the medication (not a dose range);
4. route of administration;
5. reason for administration;
6. time interval between doses for administering the medication;
7. maximum dosage or number of times to be administered in a specific time frame; and
8. when to notify the attending physician if the medication is not effective.

C. Standing orders shall be signed and dated by the attending physician initially and at least annually thereafter.

D. A copy of the standing orders shall be maintained in the resident's active clinical record.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:56 (January 1998).

### **Subchapter B. Nursing Services**

#### **§9809. General Provisions**

The nursing home shall have sufficient nursing staff to provide nursing and related services that meet the needs of each resident. The nursing home shall assure that each resident receives treatments, medications, diets, and other health services as prescribed and planned, all hours of each day.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:56 (January 1998).

#### **§9811. Nursing Service Personnel**

A. The nursing home shall provide a sufficient number of nursing service personnel consisting of registered nurses, licensed practical nurses, and nurse aides to provide nursing care to all residents in accordance with resident care plans 24 hours per day.

1. As a minimum, the nursing home shall provide 1.5 hours of care per patient each day.

2. Nursing service personnel shall be assigned duties consistent with their education and experience, and based on the characteristics of the resident load and the kinds of nursing skills needed to provide care to the residents.

3. Nursing service personnel shall be actively on duty. Licensed nurse coverage shall be provided 24 hours per day.

B. The nursing home shall designate a registered nurse to serve as the director of nursing services on a full-time basis during the day-tour of duty. The director of nursing services may serve as charge nurse only when the nursing home has an average daily occupancy of 60 or fewer residents.

C. If the director of nursing services has non-nursing administrative responsibility for the nursing home on a regular basis, there shall be another registered nurse assistant to provide direction of care-delivery to residents.

D. There shall be on duty, at all times, at least one licensed nurse to serve as charge nurse responsible for the supervision of the total nursing activities in the nursing home or assigned nursing unit.

E. Nurse aides shall be assigned duties consistent with their training and successful demonstration of competencies.

F. In building complexes or multistory buildings, each building or floor housing residents shall be considered a separate nursing unit and staffed separate, exclusive of the director of nursing.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:56 (January 1998).

#### **§9813. Nursing Care**

A. Each resident shall receive personal attention and nursing care in accordance with his/her condition and consistent with current acceptable nursing practice. Residents

unable to carry out activities of daily living shall receive the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

B. Each resident shall be kept clean, dry, well-groomed and dressed appropriately to the time of day and the environment; and good body and oral hygiene shall be maintained. Skin care shall be provided to each resident as needed to prevent dryness, scaling, irritation, itching, and/or pressure sores.

C. Restorative nursing care shall be provided to each resident to achieve and maintain the highest possible degree of function, self-care, and independence. Restorative nursing care shall be provided for the residents requiring such care.

D. Residents requiring assistance at mealtimes shall be assisted when necessary.

E. The nursing home shall endeavor to keep residents free from pressure sores with measures taken toward their prevention.

F. Residents requiring restraints shall be restrained with standard types of devices, applied in a manner consistent with manufacturer's specifications, and that permits speedy removal in the event of an emergency. Each restrained resident shall be monitored every 30 minutes and released for 10 minutes every two hours. Restraints shall not be used for punishment nor convenience of staff.

G. The nursing home shall promptly inform the resident; consult with the resident's attending physician; notify the resident's legal representative or interested family member, if known; and maintain documentation when there is an accident which results in injury and requires physician intervention, or significant change in the resident's physical, mental, or psychosocial status.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:56 (January 1998).

### **Subchapter C. Dietetic Services**

#### **§9815. General Provisions**

The nursing home shall provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:57 (January 1998).

#### **§9817. Dietary Service Personnel**

A. The nursing home shall employ a licensed dietitian either full-time, part-time or on a consultant basis. A minimum consultation time shall be not less than eight hours per month to ensure nutritional needs of residents are addressed timely. There shall be documentation to support that the consultation time was given.

B. If a licensed dietitian is not employed full-time, the nursing home shall designate a full-time person to serve as the dietary manager.

C. Residents at nutritional risk shall have an in-depth nutritional assessment conducted by the consulting dietitian.

D. The nursing home shall employ sufficient support

personnel competent to carry out the functions of the dietary services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:57 (January 1998).

#### **§9819. Menus and Nutritional Adequacy**

A. Menus shall be planned, approved, signed and dated by a licensed dietitian prior to use in the nursing home to meet the nutritional needs of the residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council and the National Academy of Sciences, taking into account the cultural background and food habits of residents, or as modified in accordance with the orders of the practitioner(s) responsible for the care of the resident:

1. menus shall be written for each therapeutic diet ordered;

2. if cycle menus are used, the cycle shall cover a minimum of three weeks and shall be different each day of the week;

3. each day's menu shall show the actual date served and shall be retained for six months;

4. menus for the current week shall be available to the residents and posted where food is prepared and served for dietary personnel. Portion sizes shall be reflected either on the menu or within the recipe used to prepare the meal.

B. Therapeutic diets shall be prescribed by the medical practitioner responsible for the care of the resident. Each resident's diet order shall be documented in the resident's clinical record. There shall be a procedure for the accurate transmittal of dietary orders to the dietary service and informing the dietary service when the resident does not receive the ordered diet or is unable to consume the diet, with action taken as appropriate.

1. The nursing home shall maintain a current list of residents identified by name, room number, and diet order, and such identification shall accompany each resident's meal when it is served.

2. A current therapeutic diet manual, approved by a registered dietitian, shall be readily available to attending physicians, nursing staff, and dietetic service personnel and shall be the guide used for ordering and serving diets.

C. Each resident shall receive and the nursing home shall provide:

1. at least three meals daily, at regular times comparable to normal mealtimes in the community;

2. food prepared by methods that conserve nutritive value, flavor, and appearance;

3. food that is palatable, attractive, and at the proper temperature;

4. food prepared in a form designed to meet individual needs; and

5. substitutes offered of similar nutritional value to residents who refuse food or beverages served.

D. A list of all menu substitutions shall be kept for 30 days.

E. There shall be no more than 14 hours between a substantial evening meal and breakfast the following day. A

substantial evening meal is defined as an offering of three or more menu items at one time, one of which includes a high-quality protein such as meat, fish, eggs, or cheese.

F. There shall be no more than 16 hours between a substantial evening meal and breakfast the following day when a nourishing snack is offered at bedtime. A nourishing snack is defined as a verbal offering of items, single or in combination, from the basic food groups.

G. Bedtime nourishments shall be offered nightly to all residents, unless contraindicated by the resident's medical practitioner, as documented in the resident's clinical record.

H. If residents require assistance in eating, food shall be maintained at appropriate serving temperatures until assistance is provided. Feeder trays shall be delivered at the time staff is immediately available for feeding.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:57 (January 1998).

#### **§9821. Equipment and Supplies**

A. Special eating equipment and utensils shall be provided for residents who need them. At least a one week supply of staple food with a three-day supply of perishable food conforming to the approved menu shall be maintained on the premises.

B. An approved lavatory shall be convenient and properly equipped for dietary services staff use.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:58 (January 1998).

#### **§9823. Sanitary Conditions**

A. All food shall be procured, stored, prepared, distributed, and served under sanitary conditions to prevent food borne illness. This includes keeping all readily perishable food and drink according to *State Sanitary Code*.

B. Refrigerator temperatures shall be maintained according to *State Sanitary Code*.

C. Hot foods shall leave the kitchen or steam table according to *State Sanitary Code*.

D. In-room delivery temperatures shall be maintained according to *State Sanitary Code*.

E. Food shall be transported to residents' rooms in a manner that protects it from contamination, while maintaining required temperatures.

F. Refrigerated food which has been opened from its original package shall be covered, labeled, and dated.

G. All food shall be procured from sources that comply with all laws and regulations related to food and food labeling.

H. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption.

I. All equipment and utensils used in the preparation and serving of food shall be properly cleansed, sanitized, and stored. This includes:

1. maintaining a water temperature in dishwashing machines at 140EF during the wash cycle (or according to the

manufacturer's specifications or instructions) and 180EF for the final rinse; or

2. maintaining water temperature in low temperature machines at 120EF (or according to the manufacturer's specification or instructions) with 50 ppm (parts per million) of hypochlorite (household bleach) on dish surfaces; or

3. maintaining a wash water temperature of 75EF, for manual washing in a three-compartment sink, with 25 ppm of hypochlorite or equivalent, or 12.5 ppm of iodine in the final rinse water; or a hot water immersion at 170EF for at least 30 seconds shall be maintained.

J. Dietary staff shall not store personal items within the food preparation and storage areas.

K. The kitchen shall not be used for dining of residents or unauthorized personnel.

L. Dietary staff shall use good hygienic practices.

M. Dietary employees engaged in the handling, preparation and serving of food shall use effective hair restraints to prevent the contamination of food or food contact surfaces.

N. Staff with communicable diseases or infected skin lesions shall not have contact with food if that contact will transmit the disease.

O. There shall be no use of tobacco products in the dietary department.

P. Toxic items such as insecticides, detergents, polishes, and the like shall be properly stored, labeled and used.

Q. 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 when meal preparation is completed and when full.

R. All ice intended for human consumption shall be free of visible trash and sediment.

1. Ice used for cooling stored food and food containers shall not be used for human consumption.

2. Ice stored in machines outside the kitchen shall be protected from contamination.

3. Ice scoops shall be stored in a manner so as to protect them from becoming soiled or contaminated between usage.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:58 (January 1998).

#### **Subchapter D. Pharmaceutical Services**

##### **§9825. General Requirements**

A. The nursing home shall provide emergency drugs and biologicals to its residents from an emergency kit licensed by the Louisiana State Board of Pharmacy and shall provide routine and emergency drugs and biologicals, ordered by a licensed practitioner, from a licensed pharmacy. Whether drugs and biologicals are obtained from the emergency kit(s) or from a community or institutional pharmacy permitted by the Louisiana State Board of Pharmacy, the nursing home is responsible for ensuring the timely availability of such drugs and biologicals for its residents and that pharmaceutical services are provided in accordance with accepted professional standards and all appropriate federal, state, and local laws and regulations.

B. The most current edition of drug reference materials shall be available.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:58 (January 1998).

#### **§9827. Consultant**

A. If the nursing home does not employ a licensed pharmacist, it shall have a designated consultant pharmacist that provides services in accordance with accepted pharmacy principles and standards. The minimum consultation time shall not be less than one hour per quarter, which shall not include drug regimen review activities.

B. There shall be documentation to support that the consultation time was given.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:59 (January 1998).

#### **§9829. Labeling**

A. All drug and biological containers shall be properly labeled by a licensed pharmacist following the guidelines established by the Louisiana State Board of Pharmacy.

B. The label on prepackaged (unit dose) containers shall follow the established guidelines of the Louisiana State Board of Pharmacy.

C. Over-the-counter (nonprescription) medications and biologicals, may be purchased in bulk packaging and shall be plainly labeled with the medication name and strength and any additional information in accordance with the nursing home's policies and procedures. Over-the-counter medications specifically purchased for a resident shall be labeled as previously stipulated to include the resident's name. The manufacturer's labeling information shall be present in the absence of prescription labeling.

D. The nursing home shall develop procedures to assure proper labeling for medications provided a resident for a temporary absence.

E. The nursing home shall have a procedure for the proper identification and labeling of medication brought into the nursing home from an outside source.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:59 (January 1998).

#### **§9831. Storage**

A. All drugs and biologicals shall be stored in a locked area/cabinet and kept at proper temperatures and lighting. The medicine room or medication preparation area shall have an operable sink with hot and cold water, paper towels, and a soap dispenser.

B. Access to drug storage areas shall be limited to licensed nursing personnel, the licensed nursing home administrator, and the consultant pharmacist as authorized in the nursing home's policy and procedure manual. Any unlicensed, unauthorized individual (e.g., housekeepers, maintenance personnel, etc.) needing access to drug storage areas shall be

under the direct visual supervision of licensed authorized personnel.

C. Medication requiring refrigeration shall be kept separate from foods, in separate containers, within a refrigerator and stored at a temperature range of 36E to 46EF.

1. Laboratory solutions or materials awaiting laboratory pickup shall not be stored in refrigerators with food and/or medication.

2. Medication for "external use only" shall be stored separate from other medication and food.

D. Separately locked, permanently affixed compartments shall be provided for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse.

E. Medications of each resident shall be kept and stored in their originally received containers, and transferring between containers is forbidden.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:59 (January 1998).

#### **§9833. Disposition**

A. Prescription and Over-The-Counter (OTC) medications and biologicals are to be disposed of in the following manner:

1. If medication(s) and/or biological are discontinued, or the resident is discharged to the hospital, the nursing home will retain the medication(s) for up to 60 days and then destroy as described in §9833.C.2. These must be stored in an appropriately secured storage area approved by the DON and consultant pharmacist. If the resident is deceased, the medication will be disposed of as described in §9833.C.2, unless a written order of the attending physician specifies otherwise. If the resident is transferred to another facility, the medication will accompany the resident to the receiving facility, on the written order of the attending physician.

2. Controlled drugs shall not be released or sent with a resident upon transfer or discharge, except on the written order of the attending physician.

B. If the resident/legal representative receives the medications or biologicals, upon written order of the physician, documentation containing the name and the amount of the medication or biological to be received shall be completed and signed by the resident or legal representative and a facility representative acknowledging their receipt. This document shall be placed in the resident's clinical record.

C. Expired medication(s) shall not be available for resident or staff use. These shall be destroyed on-site by nursing home personnel no later than 90 days from their expiration/discontinuation date utilizing the following methods:

1. Controlled drugs shall be destroyed on-site by a licensed pharmacist after receiving DEA authorization to do so on a continuing basis, and witnessed by a state or local law enforcement officer or other licensed nursing home individual, such as RN, LPN or MD. All controlled substances to be destroyed shall be inventoried and listed on a DEA Form 41, a copy of which shall be maintained on the premises, and a copy mailed to the Louisiana State Board of Pharmacy.

These drugs shall also be listed on the resident's individual accumulative drug destruction record.

2. For noncontrolled drugs, there shall be documentation of the resident's name; name, strength, and quantity of the drug destroyed; prescription number; method and date of destruction; signatures of at least two individuals (which shall be either licensed nurses who are employees of the nursing home, or the consultant pharmacist) witnessing the destruction. Medications of residents transferred to a hospital may be retained until the resident's return. Upon the resident's return, the physician's order shall dictate whether or not the resident is to continue the same drug regimen as previously ordered. Medications not reordered by the physician shall be destroyed, using the procedures outlined above.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:59 (January 1998).

### **§9835. Administration**

A. Drugs and biologicals shall not be administered to residents unless ordered by a practitioner (e.g., physician, dentist, or Doctor of Osteopathy) duly licensed to prescribe drugs. Such orders shall be in writing over the practitioner's signature. Drugs and biologicals shall be administered only by medical personnel or licensed nurses authorized to administer drugs and biologicals under their practice act.

B. Drugs and biologicals shall be administered as soon as possible after doses are prepared, not to exceed two hours. They shall be administered by the same person who prepared the doses for administration, except under unit dose package distribution systems.

C. An individual resident may self-administer drugs if permissible by the nursing home's policy and procedure, and if an interdisciplinary team has determined that this practice is safe. The team shall also determine who will be responsible for storage and documentation of the administration of drugs. The resident's care plan shall reflect approval to self-administer medications.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:60 (January 1998).

### **§9837. Drug Regimen Review**

The drug regimen of each resident shall be reviewed as often as dictated by the resident's condition. Irregularities shall be reported, in writing, to the resident's attending physician and director of nursing, and these reports shall be acted upon.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:60 (January 1998).

### **§9839. Emergency Medication Kit**

A. If an emergency medication kit is used in the nursing home, a permit shall be obtained and maintained in accordance with the Louisiana State Board of Pharmacy.

B. A separate permit is required for each emergency medication kit.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:60 (January 1998).

### **§9841. Medication Record Keeping**

#### **A. General Records**

1. Each resident shall have a Medication Administration Record (MAR) on which the dose of each drug or biological administered shall be properly recorded by the person administering the drug or biological to include:

- a. name, strength, and dosage of the medication;
- b. method of administration including site, if applicable;
- c. time of administration defined as one hour before to one hour after the ordered time of administration; and
- d. the initials of persons administering the medication along with a legend of the initials.

2. Medication errors and drug reactions shall be reported immediately to the resident's attending physician by a licensed nurse, and an entry made in the resident's record.

3. Medications not specifically prescribed as to time or number of doses shall automatically be stopped after a reasonable time that is predetermined by the nursing home's written policy and procedures. The attending physician shall be notified of an automatic stop order prior to the last dose so that he/she may decide if the administration of the medication is to be continued or altered.

#### **B. Controlled Drugs**

1. The nursing home shall establish a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate accounting of all controlled drugs received, administered, and destroyed or otherwise disposed. Only licensed medical personnel shall be allowed to receive and sign for delivery of controlled drugs.

2. Control records of schedule II drugs shall be maintained. The individual resident records shall list each type and strength of drug and the following information:

- a. date;
- b. time administered;
- c. name of resident;
- d. dose;
- e. physician's name;
- f. signature of person administering the dose; and
- g. the balance on hand.

C. Noncontrolled Drugs. Records of noncontrolled medication destruction shall be maintained in the resident's clinical record and shall include the following:

1. resident's name;
2. name, strength, and quantity of the medication;
3. prescription number;
4. method and date of destruction;
5. signatures of at least two individuals (which shall be either licensed nurses, who are employees of the nursing home, or the consultant pharmacist) witnessing the destruction.



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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:60 (January 1998).

### **Subchapter E. Activity Services**

#### **§9843. Activities Program**

A. A nursing home shall provide for an ongoing program of diverse and meaningful activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident.

B. The activities program encourages each resident's voluntary participation and choice of activities based upon his/her specific needs and interest.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:61 (January 1998).

#### **§9845. Activity Service Personnel**

The activities program shall be directed by a resident activities director. The resident activities director shall be responsible to the administrator or his/her designee for administration and organization of the activities program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:61 (January 1998).

### **Subchapter F. Social Services**

#### **§9847. Social Services**

A nursing home shall provide medically-related social services to meet the needs of each resident.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:61 (January 1998).

#### **§9851. Social Service Personnel**

An employee of the facility shall be designated as responsible for meeting the social services needs of the resident.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:61 (January 1998).

### **Subchapter G. Rehabilitation Services**

#### **§9853. Delivery of Service**

Rehabilitative services, when provided in the nursing home, shall be delivered in a safe and accessible area. Rehabilitation services shall be provided under the written order of the resident's attending physician. These services shall be provided by appropriately credentialed individuals.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:61 (January 1998).

#### **§9855. Record Keeping**

An initial assessment, established by the appropriate therapist, and a written rehabilitation plan of care shall be

developed. The resident's progress will be recorded by the therapist at the time of each visit. This information will be maintained in the resident's clinical record.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:61 (January 1998).

### **Subchapter H. Resident Clinical Records**

#### **§9857. General Provisions**

The nursing home shall maintain clinical records on each resident in accordance with accepted professional standards and practices. Each resident's clinical record shall be complete, accurately documented, readily accessible, and systematically organized to facilitate retrieving and compiling information.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:61 (January 1998).

#### **§9859. Maintenance of Records**

A. The overall supervisory responsibility for the resident record service shall be assigned to a responsible employee of the facility.

B. All entries in the clinical record shall be either typewritten or legibly written in ink, dated, and signed.

C. If electronic signatures are used, the nursing home shall develop a procedure to assure the confidentiality of each electronic signature and to prohibit the improper or unauthorized use of any computer generated signature.

D. If a facsimile communications system (FAX) is used, the nursing home shall take precautions when thermal paper is used to ensure that a legible copy is retained as long as the clinical record is retained.

E. A nursing home record may be kept in any written, photographic, microfilm, or other similar method or may be kept by any magnetic, electronic, optical, or similar form of data compilation which is approved for such use by the department.

F. No magnetic, electronic, optical, or similar method shall be approved unless it provides reasonable safeguards against erasure or alteration.

G. A nursing home may, at its discretion, cause any nursing home record or part to be microfilmed, or similarly reproduced, in order to accomplish efficient storage and preservation of nursing home records.

H. Upon an oral or written request, the nursing home shall give the resident or his/her legal representative access to all records pertaining to himself/herself including current clinical records within 24 hours, excluding weekends and holidays. After receipt of his/her records for inspection, the nursing home shall provide, upon request and two working days notice, at a cost consistent with the provisions of R.S. 40:1299(A)(2)(b), photocopies of the records or any portions of them.

I. The nursing home shall ensure that all clinical records are completed within 90 days of discharge, transfer, or death. All information pertaining to a resident's stay is centralized in the clinical record.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:61 (January 1998).

#### **§9861. Content**

A. The clinical record contains sufficient information to identify the resident clearly, to justify the diagnosis and treatment, and to document the results accurately.

B. As a minimum, each clinical record shall contain:

1. sufficient information to identify the resident;
  2. physician's orders;
  3. progress notes by all practitioners and professional personnel providing services to the resident;
  4. a record of the resident's assessments;
  5. the plan of care;
  6. entries describing treatments and services provided;
- and
7. reports of all diagnostic tests and procedures.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:62 (January 1998).

#### **§9863. Confidentiality**

The nursing home shall safeguard clinical record information against loss, destruction, or unauthorized use. The nursing home shall ensure the confidentiality of resident records, including information in a computerized record system, except when release is required by transfer to another health care institution, law, third party payment contract, or the resident. Information from or copies of records may be released only to authorized individuals, and the nursing home must ensure that unauthorized individuals cannot gain access to or alter resident records.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:62 (January 1998).

#### **§9865. Retention**

A. Clinical records shall be retained for a minimum of six years following a resident's discharge or death, unless the records are pertinent to a case in litigation, in which instance they shall be retained indefinitely or until the litigation is resolved.

B. A nursing home which is closing shall notify the department in writing at least 14 days prior to cessation of operation of their plan for the disposition of residents' clinical records for approval.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:62 (January 1998).

### **Chapter 99. Nursing Homes**

#### **Subchapter A. Physical Environment**

##### **§9901. General Provisions**

The nursing home shall be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:62 (January 1998).

#### **§9903. Nurses' Station**

A. Each floor of a multistory nursing home shall have a nurses' station.

B. Each nurse's station shall be provided with working space and accommodations for recording and charting purposes by nursing home staff with storage space for in-house resident records.

C. The nurses' station shall be equipped to audibly receive resident calls electronically through a call system from resident rooms and toilet and bathing facilities. There shall be a medicine preparation room or area.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:62 (January 1998).

#### **§9905. Resident Rooms**

A. Resident bedrooms shall be designed and equipped for adequate nursing care, comfort, and privacy of residents. Each resident bedroom shall have a floor, walls, and ceilings in good repair and so finished as to enable satisfactory cleaning.

B. Each resident's bedroom shall have a floor at or above grade level; accommodate no more than four residents; have a minimum width of not less than 10 feet; have a ceiling height of at least 7 feet; have electrical outlets in accordance with the *National Electrical Code* of which the construction plans were initially approved by DHH and the State Fire Marshal's Office; have direct access to an exit corridor; and be so situated that passage through another resident's bedroom is unnecessary.

C. A ceiling height of at least 8 feet shall be provided in nursing homes or additions to nursing homes in which construction plans were initially approved by DHH and the State Fire Marshal's Office after January 20, 1998.

D. Private resident bedrooms shall measure at least 100 square feet of bedroom area.

E. Multiple resident bedrooms shall measure at least 80 square feet of bedroom area for each resident.

F. There shall be at least three feet between the sides and foot of the bed and any wall, other fixed obstruction, or other bed, unless the furniture arrangement is the resident's preference and does not interfere with service delivery. In nursing homes or additions to nursing homes in which construction plans were initially approved by DHH and the State Fire Marshal's Office after January 20, 1998, there shall be at least 4 feet between the sides and foot of the bed and any wall, other fixed obstruction, or other bed, unless the furniture arrangement is the resident's preference and does not interfere with service delivery.

G. Each resident's bedroom shall have at least one window opening to the outside atmosphere. Windows with sills less than 30 inches from the floor shall be provided with guard rails.

H. Each resident's bedroom window shall be provided with shades, curtains, drapes, or blinds.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:62 (January 1998).

**§9907. Resident Room Furnishings**

A. Each resident shall be provided with an individual bed of proper size and height for the convenience of the resident and equipped with:

1. a clean spring in good repair;
2. a clean, comfortable, well-constructed mattress at least 5 inches thick with waterproof ticking and correct size to fit the bed;
3. a clean, comfortable pillow shall be provided for each bed with extra pillows available to meet the needs of the residents;
4. adequate bed rails, when necessary, to meet the needs of the resident; and
5. sheets and covers appropriate to the weather and climate.

B. Screens or noncombustible ceiling-suspended privacy curtains which extend around the bed shall be provided for each bed in multiresident bedrooms to assure resident privacy. Total visual privacy without obstructing the passage of other residents either to the corridor, closet, lavatory, or adjacent toilet room nor fully encapsulating the bedroom window must be provided.

C. The nurses' call system cords, buttons, or other communication mechanisms shall be placed where they are within reach of each resident.

D. Each resident shall be provided a bedside table with at least two drawers, and an enclosed hanging space for clothing that is accessible to the resident. As appropriate to resident needs, each resident shall have a comfortable chair with armrests, waste receptacle, and access to mirror unless medically contraindicated.

E. Each resident who has tray service to his/her room shall be provided with an adjustable overbed table positioned so that the resident can eat comfortably.

F. Each resident shall be provided with a bedside light or over-the-bed light capable of being operated from the bed for nursing homes in which construction plans were initially approved by DHH and the State Fire Marshal's Office after May 1, 1997.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:63 (January 1998).

**§9909. Locked Units**

A. Nursing homes providing locked units must develop admission criteria. There must be documentation in the resident's record to indicate the unit is the least restrictive environment possible, and placement in the unit is needed to facilitate meeting the resident's needs.

B. Guidelines for admission shall be provided to either the resident, his/her family, and his/her legal representative.

C. Locked units are designed and staffed to provide the care and services necessary for the resident's needs to be met.

D. There must be sufficient staff to respond to emergency situations in the locked unit at all times.

E. The resident on the locked unit has the right to exercise those rights which have not been limited as a result of admission to the unit.

F. Care plans shall address the reasons for the resident being in the unit and how the facility is meeting the resident's needs.

G. Admission to a locked unit must be in compliance with R.S. 40:1299.53 and 40:2010.8.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:63 (January 1998).

**§9911. Toilet; Hand Washing; and Bathing Facilities**

A. Each floor occupied by residents shall be provided with a toilet, lavatory, and bathtub, whirlpool or shower.

B. Each bedroom shall be equipped with or conveniently located near adequate toilet and bathing facilities appropriate in number, size, and design to meet the needs of residents.

C. In nursing homes built prior to August 26, 1958, the following ratio shall be provided (whenever calculations include any fraction of a fixture, the next higher whole number of fixtures shall be installed):

Lavatories	1:10 beds
Toilets	1:10 beds
Showers or tubs	1:15 beds
Whirlpools (optional)	1:20 beds

D. In nursing homes built subsequent to August 26, 1958, the following ratio shall be provided (whenever calculations include any fraction of a fixture, the next higher whole number of fixtures shall be installed):

Lavatories	1 per bedroom or immediately adjacent thereto
Toilets	1:8 beds
Showers or tubs	1:10 beds
Whirlpools (optional)	1:20 beds

E. Bathrooms shall be easily accessible, conveniently located, well lighted, and ventilated to the outside atmosphere. Doors to bathrooms and toilet rooms used by residents shall be at least 2 feet 8 inches wide. The fixtures shall be of substantial construction, in good repair, and of such design to enable satisfactory cleaning.

F. Tub and shower bath bottoms shall be of nonslip material. Grab bars shall be provided to prevent falling and to assist in getting in and out of the tub or shower.

G. Separate toilet and lavatory facilities for use by employees shall be provided. Separate bathtubs, whirlpools, or showers shall be provided for employees who live on the premises.

H. Lights must be controlled by wall switches, which must be so placed that they cannot be reached from the bathtub, whirlpool, or shower.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:63 (January 1998).

### **§9913. Dining and Resident Activities**

A. The nursing home shall provide one or more areas designated for resident dining and activities.

B. The dining room(s) or area(s) shall seat not less than 50 percent of the licensed capacity of the nursing home at one seating where plans were initially approved by the Fire Marshall on or after January 20, 1998. No smoking shall be allowed in these areas during meal times.

C. There shall be sufficient space and equipment to comfortably accommodate the residents who participate in group and individual activities. These areas shall be well lighted and ventilated and be adequately furnished to accommodate all activities.

D. Areas used for corridor traffic or for storage of equipment shall not be considered as areas for dining or activities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:64 (January 1998).

### **§9915. Linen and Laundry**

A. The nursing home shall have available, at all times, a quantity of bed and bath linen essential for proper care and comfort of residents.

B. All linen shall be in good condition.

C. All used linen shall be bagged or enclosed in appropriate containers for transportation to the laundry.

D. Soiled linen storage areas shall be ventilated to the outside atmosphere.

E. Linen from residents with a communicable disease shall be bagged, in readily identifiable containers distinguishable from other laundry, at the location where it was used.

F. Linen soiled with blood or body fluids shall be placed and transported in bags that prevent leakage.

G. If hot water is used, linen shall be washed with detergent in water at least 160EF for 25 minutes. If low-temperature (less than or equal to 158EF) laundry cycles are used, chemicals suitable for low-temperature washing, at proper use concentration, shall be used.

H. Provisions shall be made for laundering personal clothing of residents.

I. Clean linen shall be transported and stored in a manner to prevent its contamination.

J. Nursing homes providing in-house laundry services shall have a laundry system designed to eliminate crossing of soiled and clean linen.

K. There shall be hand washing facilities for employees in the laundry.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:64 (January 1998).

### **§9917. Equipment and Supplies**

A. The nursing home shall maintain all essential mechanical, electrical, and resident care equipment in safe operating condition.

B. Therapeutic, diagnostic, and other resident care equipment shall be maintained and serviced in accordance with the manufacturer's recommendations.

C. Wheelchairs shall be available for emergency use by residents who are not fully ambulatory.

D. Equipment for taking vital signs shall be maintained.

E. At least one oxygen tank or resource of oxygen shall be readily accessible for emergency use.

F. An adequate number of battery-generated lamps or flash lights shall be available for staff use in case of electrical power failure.

G. There shall be at least one telephone adapted for use by residents with hearing impairments at a height accessible to bound residents who use wheelchairs and be available for resident use where calls can be made without being overheard.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:64 (January 1998).

### **§9919. Other Environmental Conditions**

A. The nursing home shall provide a safe, clean, orderly, homelike environment.

B. The minimum resident capacity of a nursing home shall be 150 square feet gross area per resident. Bedroom square footage per bed is a part of this gross area.

C. There shall be a well lighted and ventilated living/community room with sufficient furniture.

D. There shall be a clean utility room designed for proper storage of nursing equipment and supplies.

E. There shall be a separate soiled utility room designed for proper cleansing, disinfecting, and sterilizing of equipment and supplies. As a minimum, it shall contain equipment to satisfactorily clean resident care equipment, a clinic service sink, and provisions for the storage of cleaning supplies (e.g., mops and pails) and chemical supplies.

F. A hard surfaced off-the-road parking area to provide parking for one car per five licensed beds shall be provided. This requirement is minimum and may be exceeded by local ordinances. Where this requirement would impose an unreasonable hardship, a written request for a lesser amount may be submitted to the department for waiver consideration.

G. The nursing home shall make arrangements for an adequate supply of safe potable water even when there is a loss of normal water supply. Service from a public water supply must be used, if available. Private water supplies, if used, must meet the requirements of the *State Sanitary Code*.

H. An adequate supply of hot water shall be provided which shall be adequate for general cleaning, washing, and sterilizing of cooking and food service dishes and other utensils, and for bathing and laundry use. Hot water supply to the hand washing and bathing faucets in the resident areas shall have automatic control to assure a temperature of not less than 100EF, nor more than 120EF, at the faucet outlet.

I. The nursing home shall be connected to the public sewerage system, if such a system is available. Where a public sewerage is not available, the sewerage disposal system shall conform to the requirements of the *State Sanitary Code*.

J. The nursing home shall maintain a comfortable sound level conducive to meeting the need of the residents.

K. All plumbing shall be properly maintained and conform to the requirements of the *State Sanitary Code*.

L. There shall be at least one toilet room for employees and the public.

M. There shall be adequate outside ventilation by means of window, or mechanical ventilation or a combination of the two.

N. All openings to the outside atmosphere shall be effectively screened. Exterior doors equipped with closers in air conditioned buildings need not have screens.

O. Each room used by residents shall be capable of being heated to not less than 71°F in the coldest weather and capable of being cooled to not more than 81°F in the warmest weather.

P. Lighting levels in all areas shall be adequate to support task performance by staff personnel and independent functioning of residents. A minimum of 6' to 10' candles over the entire stairway, corridors, and resident rooms measured at an elevation of 30 inches above the floor and a minimum of 20' to 30' candles over areas used for reading or close work shall be available.

Q. Corridors used by residents shall be equipped on each side with firmly secured handrails, affixed to the wall.

R. There shall be an effective pest control program so that the nursing home is free of pest and rodent infestation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:64 (January 1998).

## **Subchapter B. Infection Control and Sanitation**

### **§9921. Organization**

A nursing home shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:65 (January 1998).

### **§9923. Infection Control Program**

A. An infection control committee shall be established consisting of the medical director and representatives from at least administration, nursing, dietary, and housekeeping personnel.

B. The committee shall establish policies and procedures for investigating, controlling, and preventing infections in the nursing home, and monitor staff performance to ensure proper execution of policies and procedures.

C. The committee shall approve and implement written policies and procedures for the collection, storage, handling, and disposal of medical waste.

D. The committee shall meet at least quarterly, documenting the content of its meetings.

E. Reportable diseases as expressed in the *State Sanitary Code* shall be reported to the local parish health unit of the Office of Public Health.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:65 (January 1998).

### **§9925. Employee Health Policies and Procedures**

A. Nursing home employees with a communicable disease or infected skin lesions shall be prohibited from direct contact with residents or their food, if direct contact will transmit the disease.

B. The nursing home shall require staff to wash their hands after each direct resident contact for which hand washing is indicated by accepted professional practice. An antimicrobial gel or waterless cleaner may be used between resident contact, when appropriate. The nursing home shall follow the Centers for Disease Control's *Guideline for Hand Washing and Hospital Environmental Control*, 1985 for hand washing.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:65 (January 1998).

### **§9927. Isolation**

When the infection control program determines that a resident needs isolation to prevent the spread of infection, the nursing home shall isolate the resident.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:65 (January 1998).

### **§9929. Housekeeping**

There shall be sufficient housekeeping personnel to maintain a safe, clean, and orderly interior.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:65 (January 1998).

### **§9931. Nursing Care Equipment**

A. Bedpans, urinals, emesis basins, wash basins, and other personal nursing items shall be thoroughly cleaned after each use and sanitized as necessary. Water pitchers, when provided, shall be sanitized as necessary.

B. All catheters, irrigation sets, drainage tubes, or other supplies or equipment for internal use, and as identified by the manufacturer as one-time use only, will be disposed of in accordance with the manufacturer's recommendations.

C. Disposable syringes used for feeding purposes shall be disposed of in accordance with the manufacturer's recommendations.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:65 (January 1998).

**§9933. Waste and Hazardous Materials Management**

The nursing home shall have a written and implemented waste management program that identifies and controls wastes and hazardous materials. The program shall comply with all applicable laws and regulations governing wastes and hazardous materials.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:66 (January 1998).

Bobby P. Jindal  
Secretary

9801#053

**RULE**

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

**Private Intermediate Care Facility for the  
Mentally Retarded—Qualifying Loss Review**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule in the Medical Assistance Program, as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the rule governing the reimbursement of private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) to incorporate the following qualifying loss review process for those facilities seeking an adjustment to their per diem rates.

**XI. Qualifying Loss Review Process**

**A. Basis for Administrative Review**

1. Allowable Basis. The following matters are subject to a qualifying loss review:

- a. that rate-setting methodologies or principles of reimbursement established under the reimbursement plan were incorrectly applied;
- b. that incorrect data or erroneous calculations were used;
- c. the facility demonstrates that the estimated reimbursement, based on its prospective rate, is less than 95 percent of the estimated costs to be incurred by the facility in providing Medicaid services during the period the rate is in effect in compliance with the applicable state and federal laws related to quality and safety standards.

2. Nonallowable Basis. The following matters are not subject to a qualifying loss review:

- a. the methodology used to establish the per diem;
- b. the use of audited and/or desk reviews to determine allowable costs;
- c. the economic indicators used in the rate-setting methodology;
- d. rate adjustments related to changes in federal or state laws, rules, or regulations (e.g., minimum wage adjustments);
- e. rate adjustments related to reduction or elimination of extraordinary rates.

B. Request for Administrative Review. Any intermediate care facility for the mentally retarded (hereafter referred to as facility) seeking an adjustment to the per diem rate shall submit a written request for administrative review to the director of Institutional Reimbursements (hereafter referred to as director) in the Department of Health and Hospitals (hereafter referred to as department).

1. Time Frames

a. Requests for administrative review must be received by DHH within 30 days of either receipt of notification of rate reduction or promulgation of this rule, whichever is later. The receipt of the letter notifying the facility of its rates will be deemed to be five days from the date of the letter.

b. The department shall acknowledge receipt of the written request within 30 days after actual receipt.

c. The director shall notify the facility of his decision within a reasonable time after receipt of all necessary documentation, including additional documentation or information requested after the initial request is received. Failure to provide a decision within a reasonable time does not imply approval.

d. If the facility wishes to appeal the director's decision, the appeal request must be received by the Bureau of Appeals within 30 days after receipt of the written decision of the director. The receipt of the decision is deemed to be five days from the date of the decision.

2. Content of the Request. The facility shall bear the burden of proof in establishing the facts and circumstances necessary to support a rate adjustment. Any costs that the provider cites as a basis for relief under this provision must be calculable and audit able.

a. Basis of the Request. Any facility seeking an adjustment to the per diem rate must specify all of the following:

- i. the nature of the adjustment sought;
- ii. the amount of the adjustment sought;
- iii. the reasons or factors that the facility believes justify an adjustment.

b. Financial Analysis. An analysis demonstrating the extent to which the facility is incurring, or expects to incur, a qualifying loss shall be provided by the facility unless the basis for review is one of the following:

- i. the rate setting methodology or criteria for classifying facilities were incorrectly applied; or
- ii. incorrect data or erroneous calculations were used in establishment of the facility's per diem; or
- iii. the facility has incurred additional costs because of a catastrophe.

C. Basis for Rate Adjustment

1. Factors Considered. The department shall award additional reimbursement to a facility that demonstrates by substantiating evidence that:

- a. the facility will incur a qualifying loss;
- b. the loss will impair a facility's ability to provide services in accordance with state and federal health and safety standards;
- c. the facility has satisfactorily demonstrated that it has taken all appropriate steps to eliminate management practices resulting in unnecessary expenditures; and
- d. the facility has demonstrated that its nonreimbursed costs are generated by factors generally not shared by other facilities in the facility's bed size Level of Care (LOC).

2. Determination to Award Relief. In determining whether to award additional reimbursement to a facility that has made the showing required, the director shall consider one or more of the factors and may take any of the following actions:

- a. the director shall consider whether the facility has demonstrated that its nonreimbursed costs are generated by factors generally not shared by other facilities in the facility's bed size LOC. Such factors may include, but are not limited to, extraordinary circumstances beyond the control of the facility; or
- b. the director may consider, and may require the facility to provide financial data, including but not limited to, financial ratio data indicative of the facility's performance quality in particular areas of operations; or
- c. the director shall consider whether the facility has taken every reasonable action to contain costs on a facility-wide basis. In making such a determination, the director may require the facility to provide audited cost data or other quantitative data and information about actions that the facility has taken to contain costs.

D. Awarding Relief. The director shall make notification of the decision to award or not award relief in writing.

1. Basis of Adverse Decision

- a. The director may determine that the review request is not within the scope of the purpose for qualifying loss review.
- b. The director may determine that the information presented does not support the request for rate adjustment.

2. Adverse Decision Appeal. Averse decisions may be appealed to the Office of the Secretary, Bureau of Appeals for the Department of Health and Hospitals, Box 4183, Baton Rouge, LA 70821-4183 within 30 days of receipt of the decision.

3. Awarding Relief

- a. Action by Director. In awarding relief under this provision, the director shall:
  - i. make any necessary adjustment so as to correctly apply the reimbursement methodology to the facility submitting the appeal, or to correct calculations, data errors, or omissions; or
  - ii. increase the facility's per diem rate by an amount that can reasonably be expected to ensure continuing access

to sufficient services of adequate quality for Title XIX Medicaid recipients served by the facility.

b. Scope of Decisions. Decisions by the director to recognize omitted, additional, or increased costs incurred by any facility; to adjust the facility rates; or to otherwise award additional reimbursement to any facility shall not result in any change in the bed size LOC per diem for the remaining facilities in the bed size LOC, except that the department may adjust the per diem if the facilities receiving adjustment comprise over 10 percent of total utilization for that bed size LOC, based on the latest audited and/or desk reviewed cost reports.

c. Effective Date. The effective date of the adjustment shall be the later of:

- i. the date of occurrence of the rate change upon which the rate appeal is in response; or
- ii. the effective date of this rule.

d. Limitations. The director shall not award relief to a provider in excess of 95 percent of appellant facility's cost coverage determined by inflationary trending of the year on which rates are based. The rate adjustment shall also be limited to no more than the amount of the rate for the previous rate year. Any facility awarded relief shall be audited and cost settled up to, but not over, the amount of the adjusted rate. Should a single facility that is an entity under common ownership or control with another facility or group of facilities be awarded relief, all facilities under common ownership or control with the facility awarded relief will be subject to audit and cost settlement up to, but not over, the amount of their rates.

Bobby P. Jindal  
Secretary

9801#060

**RULE**

**Department of Insurance  
Office of the Commissioner**

**Regulation 28—Variable Contract**

Under the authority of R.S. 22:1500 and the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Insurance has amended Regulation 28.

**Rule**

**Regulation 28. Variable Contract**

**Section 1. Authority**

This regulation is adopted and promulgated by the Department of Insurance pursuant to the authority granted by R.S. 22:1500 and the Administrative Procedure Act, R.S. 49:950 et seq. This regulation replaces and repeals the regulation of similar purpose which took effect on January 1, 1969.

**Section 2. Definitions**

*Agent*—any person, corporation, partnership, or other legal entity which, under the laws of this state, is licensed as an insurance agent.

*Company*—any insurer which possesses a certificate of authority to conduct life insurance business or annuity business in the state of Louisiana.

*Contract on a Variable Basis or Variable Contract*—any policy or contract which provides for annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract, as provided for in R.S. 22:1500.

*Variable Contract Agent*—an agent who shall sell or offer to sell any contract on a variable basis.

### **Section 3. Qualifications of Insurance Companies to Issue Variable Contracts**

A. No company shall deliver or issue for delivery variable contracts within this state unless the commissioner is satisfied that its condition and method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. The commissioner shall consider the following in making such a determination:

1. the history and financial condition of the company;
2. the character, responsibility, and fitness of the officers and directors of the company; and
3. the law and regulation under which the company is authorized in the state of domicile to issue variable contracts.

B. A company's subsidiary or affiliate, by common management or ownership, may be deemed by the commissioner to have satisfied the provisions of Subsection A.2 of this Section if either the company or its subsidiary or affiliate satisfies the provisions of Subsection A.2 of this Section, provided, further, that companies having a satisfactory record of doing business in this state for a period of at least three years may be deemed to have satisfied the commissioner with respect to Subsection A.2 of this Section.

C. Before any company shall deliver or issue for delivery variable contracts, it shall submit to the commissioner:

1. a general description of the kinds of variable contracts it intends to issue;
2. if requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue variable contracts; and
3. if requested by the commissioner, biographical data with respect to officers and directors of the company.

### **Section 4. Separate Account or Separate Accounts**

A. A domestic company issuing variable contracts shall establish one or more separate accounts pursuant to R.S. 22:1500.

1. Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation or, if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account, provided that the portion of the assets of such separate account equal to the company's reserve liability with regard to the benefits guaranteed as to amount and duration, and funds guaranteed as to principal amount or stated rate of interest shall be valued in accordance with the rules otherwise applicable to the company's asset.

2. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate

account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

3.a. Notwithstanding any other provision of law, a company may:

i. with respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust, exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably, as determined by the company; or

ii. with respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having interests in such account ratably, as determined by the company. Such committee, board, or other body may have the power, exercisable alone or in conjunction with others, to manage such separate account and the investment of its assets.

b. A company, committee, board, or other body may make such other provisions in respect to any such separate account as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect, provided that the commissioner approves such provisions as not hazardous to the public or the company's policyholders in this state.

4. No sale, exchange, or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made:

- a. by a transfer of cash; or
- b. by a transfer of securities having a valuation which could be readily determined in the marketplace, and provided that such transfer of securities is approved by the commissioner. The commissioner may authorize other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

5. The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the commissioner.

6. Rules under any provision of R.S. 22:1500 or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee, board, or other similar body. No officers or directors of such company nor any member of the committee, board, or separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account.



## Section 5. Filing of Contracts

The filing requirements applicable to variable contracts shall be those filing requirements otherwise applicable under existing statutes and regulations of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate.

## Section 6. Contracts Providing for Variable Benefits

A. Any variable contract delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of benefits. Any such contract providing benefits which vary during the payment period, including a group contract and any certificate issued thereunder, shall state that the periodic payments will vary to reflect investment experience and shall contain, on its first page, a clear statement to the effect that the periodic payments thereunder are on a variable basis. Any such contract which provides values which are vested in an annuitant under an individual contract or in the holder of a certificate under a group contract prior to the commencement of the payment period, which values will vary to reflect investment experience, shall state that such values are on the variable basis. Any certificate issued under a group contract providing such variable values shall also contain the statements required by the preceding sentence. If any such contract provides such variable periodic payments, as well as such variable values, the statements required by the preceding sentences may be combined.

B. Illustrations of benefits payable under any variable contract shall not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of annuity payments.

C.1. Any individual variable annuity contract delivered or issued for delivery in this state shall stipulate the investment increment factors to be used in computing the dollar amount of variable benefits or other contractual payments or values thereunder, and may guarantee that expenses and/or mortality results shall not adversely affect such dollar amounts. If not guaranteed, the expense and mortality factors shall also be stipulated in the contract.

2. In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:

a. the annual net investment increment assumption shall not exceed 5 percent, except with the approval of the commissioner;

b. to the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, Ultimate, or any modification of that table not having a higher mortality rate at any age, or, if approved by the commissioner, from another table.

3. *Expense*, as used in this Subsection, may exclude some or all taxes, as stipulated in the contract.

4. Variable annuity contracts delivered or issued for delivery in this state may include as an incidental benefits provision for payment on death during the deferred period of

an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at the time of death; such provisions will not be deemed to be contracts of life insurance and therefore not subject to the provisions of the Insurance Law governing life insurance. Provision for any other benefit on death during the deferred period will be subject to such insurance provisions.

5. The reserve liability for variable annuities shall be established pursuant to the requirements of the standard valuation law, in accordance with actuarial procedures that recognize the variable nature of the benefits provided.

## Section 7. Required Reports

A. Any company issuing individual variable contracts providing benefits in variable amounts shall mail to the contract holder, at least once in each contract year after the first, at his last address known to the company, a statement or statements reporting the investments held in the separate account, and in the case of contracts under which payments have not yet commenced, a statement reporting as of a date not more than four months previous to the date of mailing:

1. the number of accumulation units credited to such contracts and the dollar value of a unit; or

2. the value of the contract holder's account.

B. The company shall submit annually to the insurance commissioner a statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners.

## Section 8. Foreign Companies

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially equal to that provided by these regulations, the commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or regulation as compliance with these regulations.

## Section 9. Licensing of Agents and Other Persons

A.1. No agent shall be eligible to sell or offer for sale a contract on a variable basis unless, prior to making any solicitation or sale of such a contract, that agent is licensed to sell life insurance in this state and presents evidence of satisfactorily passing one of the following written examinations upon securities and variable contracts:

a. any state securities examination accepted by the Securities and Exchange Commission;

b. the National Association of Securities Dealers, Inc. examination for principals or examination for qualification as a registered representative;

c. the various securities examinations required by the New York Stock Exchange, the American Stock Exchange, the Pacific Stock Exchange, or any other registered national securities exchange;

d. the Securities and Exchange Commission test given pursuant to Section 15(b)(8) of the Securities Exchange Act of 1934.

2. Any agent who participates only in the sale or offering for sale of variable contracts that are not registered under the Federal Securities Act of 1933 need not be licensed as a variable contract agent.

3. Any agent applying for a license as a variable contract agent shall do so by filing an application. All applications for a license shall be in writing on uniform forms prescribed by the commissioner of Insurance.

B. Any applicant for license as a variable contract agent shall present evidence that the applicant is currently registered with the Federal Securities and Exchange Commission as a broker-dealer or is currently associated with a broker-dealer and has met qualification requirements with respect to such association.

C. Except as modified by this regulation, refer to Part XXIV and Insurance Regulations of this department governing the licensing of life insurance agents.

D. Any person licensed in this state as a variable contract agent shall immediately report to the commissioner:

1. any suspension or revocation of the agent's variable contract license or life insurance license in any other state or territory of the United States;

2. the imposition of any disciplinary sanctions (including the suspension or expulsion from membership, suspension or revocation of or denial of registration) imposed upon him/her by the National Securities Exchange, The National Securities Association, or any federal, state, or territorial agency with jurisdiction over securities or contracts on a variable basis;

3. any judgment or injunction entered against him/her on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

E. The commissioner may reject any application or suspend, revoke, or refuse to renew any agent's variable contract license upon any ground that would bar such applicant or such agent from being licensed to sell life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of an agent's life insurance license shall also govern any proceeding for suspension or revocation of an agent's variable contract license.

F. An agent's variable contract license shall be renewed annually upon the approval of a variable contract agent appointment. A certificate of license status dated within 90 days must be submitted with the appointment for any nonresident agent.

James H. "Jim" Brown  
Commissioner

9801#009

## RULE

### Department of Insurance Office of the Commissioner

#### Regulation 33—Medicare Supplement Insurance Minimum Standards

Pursuant to the provisions of R.S. 49:950 et seq. and R.S. 22:224, the commissioner of Insurance has amended Regulation 33. This action is necessary to bring the Medicare Supplement Insurance Minimum Standards regulation in line with the provisions mandated by the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), 42 U.S.C. 1395 et seq., as amended, and with Act 633 of the 1997 Regular Legislative Session.

#### Rule

##### Section 1. Purpose

The purpose of this regulation is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

##### Section 2. Authority

This regulation is issued pursuant to the authority vested in the commissioner under R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 22:224 of the *Insurance Code*.

##### Section 3. Applicability and Scope

A. Except as otherwise specifically provided in Sections 7, 12, 13, 16, and 21, this regulation shall apply to:

(1) all Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this regulation; and

(2) all certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this state.

B. This regulation shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

## Section 4. Definitions

For purpose of this regulation:

A. *Applicant*—

(1) in the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and

(2) in the case of a group Medicare supplement policy, the proposed certificate holder.

B. *Certificate*—any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

C. *Certificate Form*—the form on which the certificate is delivered or issued for delivery by the issuer.

D. *Issuer*—includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

E. *Medicare*—the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

F. *Medicare Supplement Policy*—a group or individual policy of health insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare. Also, it includes those plans commonly known as health care prepayment plans (HCPPs).

G. *Policy Form*—the form on which the policy is delivered or issued for delivery by the issuer.

H. *Qualified Actuary*—an actuary who is a member of either the Society of Actuaries or the American Academy of Actuaries.

## Section 5. Policy Definitions and Terms

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms which conform to the requirements of this Section.

A. *Accident, Accidental Injury, or Accidental Means*—shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words or description or characterization.

(1) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(2) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or

similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. *Benefit Period or Medicare Benefit Period*—shall not be defined more restrictively than as defined in the Medicare program.

C. *Convalescent Nursing Home, Extended Care Facility, or Skilled Nursing Facility*—shall not be defined more restrictively than as defined in the Medicare program.

D. *Health Care Expenses*—expenses of health maintenance organizations associated with the delivery of health care services which expenses are analogous to incurred losses of insurers. Expenses shall not include:

- (1) home office and overhead costs;
- (2) advertising costs;
- (3) commissions and other acquisition costs;
- (4) taxes;
- (5) capital costs;
- (6) administrative costs; and
- (7) claims processing costs.

E. *Hospital*—may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. *Medicare*—shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 89-97, as Enacted by the 89th Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

G. *Medicare Eligible Expenses*—expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.

H. *Physician*—shall not be defined more restrictively than as defined in the Medicare program.

I. *Sickness*—shall not be defined to be more restrictive than the following:

*Sickness*—illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force.

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

## Section 6. Policy Provisions

A. Except for permitted pre-existing condition clauses as described in Section 7A(1) and Section 8A(1) of this regulation, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described pre-existing diseases or physical conditions.

C. No Medicare supplement policy or certificate in force in the state shall contain benefits which duplicate benefits provided by Medicare.

**Section 7. Minimum Benefit Standards for Policies or Certificates Issued for Delivery Prior to July 20, 1992**

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a pre-existing condition. The policy or certificate shall not define a pre-existing condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(4) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(a) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(5)(a) Except as authorized by the commissioner of this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Paragraph (5)(d), the issuer shall offer certificate holders an individual Medicare supplement policy. The issuer shall offer the certificate holder at least the following choices:

(i) an individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) an individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 8B of this regulation;

(iii) group contracts in force prior to the effective date of the Omnibus Budget Reconciliation Act (OBRA) of 1990 may have existing contractual obligations to continue benefits contained in the group contract. This Section is not intended to impair those obligations.

(c) If membership in a group is terminated, the issuer shall:

(i) offer the certificate holder the conversion opportunities described in Subparagraph (b); or

(ii) at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

**B. Minimum Benefit Standards**

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth in any Medicare benefit period;

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [\$100];

(7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

## **Section 8. Benefit Standards for Policies or Certificates Issued or Delivered on or After July 20, 1992**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after July 20, 1992. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a pre-existing condition. The policy or certificate may not define a pre-existing condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) the issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(b) the issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation;

(c) if the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Section 8A(5)(e), the issuer shall offer certificate holders an individual Medicare supplement policy which (at the option of the certificate holder):

(i) provides for continuation of the benefits contained in the group policy; or

(ii) provides for benefits that otherwise meet the requirements of this Subsection.

(d) if an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) offer the certificate holder the conversion opportunity described in Section 8A(5)(c); or

(ii) at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(e) if a group Medicare supplement policy is replaced by another group Medicare supplement policy

purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(7)(a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed 24 months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated (effective as of the date of termination of such entitlement) as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(c) Reinstitution of coverages:

(i) shall not provide for any waiting period with respect to treatment of pre-existing conditions;

(ii) shall provide for coverage which is substantially equivalent to coverage in effect before the date of suspension; and

(iii) shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

B. Standards for Basic ("Core") Benefits Common to All Benefit Plans. Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic "core" package, but not in lieu of it.

(1) Coverage of Part A Medicare Eligible Expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period;

(2) Coverage of Part A Medicare Eligible Expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the Diagnostic Related Group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(5) Coverage for the coinsurance amount of Medicare Eligible Expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this regulation:

(1) Medicare Part A Deductible. Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care. Coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one-hundredth day in a Medicare benefit period for post hospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible. Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) Eighty percent of the Medicare Part B Excess Charges: Coverage for 80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) One-hundred percent of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit. Coverage for 50 percent of outpatient prescription drug charges, after a \$250 calendar-year deductible, to a maximum of \$1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(7) Extended Outpatient Prescription Drug Benefit. Coverage for 50 percent of outpatient prescription drug charges, after a \$250 calendar-year deductible to a maximum of \$3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(8) Medically Necessary Emergency Care in a Foreign Country. Coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar-year deductible of \$250, and a lifetime

maximum benefit of \$50,000. For purposes of this benefit, *emergency care* shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive Medical Care Benefit. Coverage for the following preventive health services:

(a) an annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph (b) and patient education to address preventive health care measures;

(b) any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

(i) fecal occult blood test or digital rectal examination, or both;

(ii) mammogram;

(iii) dipstick urinalysis for hematuria, bacteriuria and proteinuria;

(iv) pure tone (air only) hearing screening test, administered or ordered by a physician;

(v) serum cholesterol screening (every five years);

(vi) thyroid function test;

(vii) diabetes screening.

(c) influenza vaccine administered at any appropriate time during the year and Tetanus and Diphtheria booster (every 10 years);

(d) any other tests or preventive measures determined appropriate by the attending physician.

Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of \$120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit. Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) *Activities of Daily Living*—include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) *Care Provider*—a duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) *Home*—any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) *At-home Recovery Visit*—the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(b) Coverage Requirements and Limitations

(i) At-home recovery services provided must be primarily services which assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) no more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) the actual charges for each visit up to a maximum reimbursement of \$40 per visit;

(III) \$1,600 per calendar year;

(IV) seven visits in any one week;

(V) care furnished on a visiting basis in the insured's home;

(VI) services provided by a care provider as defined in this Section;

(VII) at-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(VIII) at-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) home care visits paid for by Medicare or other government programs; and

(ii) care provided by family members, unpaid volunteers or providers who are not care providers.

(11) New or Innovated Benefits. An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.

**Section 9. Standard Medicare Supplement Benefit Plans**

A. An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic "core" benefits, as defined in Section 8B of this regulation.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this Section shall be offered for sale in this state, except as may be permitted in Section 8C(11) and in Section 10 of this regulation.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "J" listed in this Subsection and conform to the definitions in Section 4 of this regulation. Each benefit shall be structured in accordance with the format provided in Sections

8B and 8C and list the benefits in the order shown in this Subsection. For purposes of this Section, *Structure*, *Language*, and *Format* means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in Subsection C, other designations to the extent permitted by law.

E. Make-up of Benefit Plans

(1) Standardized Medicare supplement benefit plan "A" shall be limited to the Basic ("Core") Benefits Common to All Benefit Plans, as defined in Section 8B of this regulation.

(2) Standardized Medicare supplement benefit plan "B" shall include only the following: the Core Benefit as defined in Section 8B of this regulation plus the Medicare Part A Deductible as defined in Section 8C(1).

(3) Standardized Medicare supplement benefit plan "C" shall include only the following: the Core Benefit as defined in Section 8B of this regulation plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible and Medically Necessary Emergency Care in a Foreign Country as defined in Sections 8C(1), (2), (3) and (8), respectively.

(4) Standardized Medicare supplement benefit plan "D" shall include only the following: the Core Benefit as defined in Section 8B of this regulation plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and the At-Home Recovery Benefit as defined in Sections 8C(1), (2), (8) and (10), respectively.

(5) Standardized Medicare supplement benefit plan "E" shall include only the following: the Core Benefit as defined in Section 8B of this regulation plus the Medicare Part A Deductible, Skilled Nursing Facility Care, medically Necessary Emergency Care in a Foreign Country and Preventive Medical Care as defined in Sections 8C(1), (2), (8) and (9), respectively.

(6) Standardized Medical supplement benefit plan "F" shall include only the following: the Core Benefit as defined in Section 8B of this regulation plus the Medicare Part A Deductible, Skilled Nursing Facility Care, the Part B Deductible, 100 percent of the Medicare Part B Excess Charges, and Medically Necessary Emergency Care in a Foreign Country as defined in Sections 8C(1), (2), (3), (5) and (8), respectively.

(7) Standardized Medicare supplement benefit plan "G" shall include only the following: the Core Benefit as defined in Section 8B of this regulation plus the Medicare Part A Deductible, Skilled Nursing Facility Care, 80 percent of the Medicare Part B Excess Charges, Medically Necessary Emergency Care in a Foreign Country, and the At-Home Recovery Benefits as defined in Sections 8C(1), (2), (4), (8) and (10), respectively.

(8) Standardized Medicare supplement benefit plan "H" shall consist of only the following: the Core Benefit as defined in Section 8B of this regulation plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Basic Prescription Drug Benefit and Medically Necessary Emergency Care in a Foreign Country as defined in Sections 8C(1), (2), (6) and (8), respectively.

(9) Standardized Medicare supplement benefit plan "I" shall consist of only the following: the Core Benefit as defined in Section 8B of this regulation plus the Medicare Part A Deductible, Skilled Nursing Facility Care, 100 percent of the Medicare Part B Excess Charges, Basic Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country and At-Home Recovery Benefit as defined in Sections 8C(1), (2), (5), (6), (8) and (10), respectively.

(10) Standardized Medicare supplement benefit plan "J" shall consist of only the following: the Core Benefit as defined in Section 8B of this regulation plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, 100 percent of the Medicare Part B Excess Charges, Extended Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country, Preventive Medical Care and At-Home Recovery Benefit as defined in Sections 8C(1), (2), (3), (5), (7), (8), (9) and (10), respectively.

### **Section 10. Medicare Select Policies and Certificates**

A.(1) This Section shall apply to Medicare Select policies and certificates, as defined in this Section.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this Section.

B. For the purposes of this Section:

(1) *Complaint*—any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) *Grievance*—dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or provision of services concerning a Medicare Select issuer or its network providers.

(3) *Medicare Select Issuer*—an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) *Medicare Select Policy or Select Certificate*—means respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) *Network Provider*—a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) *Restricted Network Provision*—any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) *Service Area*—the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

C. The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this Section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this regulation.

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the

commissioner. The plan of operation shall contain at least the following information:

(1) evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community;

(b) the number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) to deliver adequately all services that are subject to a restricted network provision; or

(ii) to make appropriate referrals;

(c) there are written agreements with network providers describing specific responsibilities;

(d) emergency care is available 24 hours per day and seven days per week;

(e) in the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This Paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) a statement or map providing a clear description of the service area.

(3) a description of the grievance procedure to be utilized.

(4) a description of the quality assurance program, including:

(a) the formal organizational structure;

(b) the written criteria for selection, retention and removal of network providers; and

(c) the procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) a list and description, by specialty, of the network providers.

(6) copies of the written information proposed to be used by the issuer to comply with Subsection I.

(7) any other information requested by the commissioner.

F.(1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after 30 days unless specifically disapproved.

(2) An updated list of network providers shall be filed with the commissioner at least quarterly.



G. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(1) the services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) it is not reasonable to obtain such services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) an outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) other Medicare supplement policies or certificates offered by the issuer; and

(b) other Medicare Select policies or certificates.

(2) a description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers;

(3) a description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized;

(4) a description of coverage for emergency and urgently needed care and other out-of-service area coverage;

(5) a description of limitations on referrals to restricted network providers and to other providers;

(6) a description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer;

(7) a description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this Section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include mediation procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than each March 31 to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M.(1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months.

(2) For the purposes of this Subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this Paragraph, a *significant benefit* means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this Section should be discontinued due to either the failure of the Medicare Select Program to be re-authorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this Subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this Paragraph, a *significant benefit* means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

## Section 11. Open Enrollment

A. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this Subsection without regard to age.

B. Except as provided in Section 22, Subsection A shall not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a pre-existing condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

## Section 12. Standards for Claims Payment

A. An issuer shall comply with Section 1882(c)(3) of the Social Security Act (as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, P.L. 100-203) by:

(1) accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) paying the participating physician or supplier directly;

(4) furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) providing to the secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

## Section 13. Loss Ratio Standards and Refund or Credit of Premium

### A. Loss Ratio Standards

(1)(a) A Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(i) at least 75 percent of the aggregate amount of premiums earned in the case of group policies; or

(ii) at least 65 percent of the aggregate amount of premiums earned in the case of individual policies;

(b) Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this Section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For purposes of applying Subsection A(1) of this Section and Subsection C(3) of Section 14 only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

(4) For policies issued prior to January 20, 1991, expected claims in relation to premiums shall meet:

(a) the originally filed anticipated loss ratio when combined with the actual experience since inception;

(b) the appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) when combined with actual experience beginning with January 1, 1998 to date; and

(c) the appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) over the entire future period for which the rates are computed to provide coverage.

### B. Refund or Credit Calculation

(1) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(2) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For the purposes of this Section, policies or certificates issued prior to January 20, 1991, the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after January 1, 1998. The first report shall be due by May 31, 2000 of this amendment.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the secretary of Health and Human Services, but

in no event shall it be less than the average rate of interest for 13-week Treasury Notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Filing of Rates and Rating Schedules. All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this Section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(1) Each Medicare supplement policy or certificate form shall be accompanied, upon submission for approval, by an actuarial memorandum. The memorandum shall be prepared, signed and dated by a qualified actuary in accordance with generally accepted actuarial principles and practices, and shall contain at least the information listed in the following subparagraphs:

- (a) the form number that the actuarial memorandum addresses;
- (b) a brief description of benefits provided;
- (c) a schedule of rates to be used;
- (d) a complete explanation of the rating process, including assumptions, claims data, methodology, and formulae used in developing the gross premium rates;
- (e) a statement of what experience base will be used in future rate adjustments;
- (f) a certification that the anticipated aggregate loss ratio is at least 65 percent (for individual coverage) or at least 75 percent (for group coverage), which certification should include a statement of the period over which the aggregate loss ratio is expected to be realized;
- (g) a table of anticipated loss ratio experience for representative issue ages for each year from issue over the period of time over which the aggregate loss ratio is to be realized; and
- (h) a certification that the premiums are reasonable in relation to the benefits provided;
- (i) the memorandum shall be filed in duplicate;
- (j) any additional information requested by the commissioner.

(2) Subsequent rate adjustments filings, except for those rates filed solely due to a change in the Part A calendar year deductible, shall also provide an actuarial memorandum, prepared, signed and dated by a qualified actuary, in accordance with generally accepted actuarial principles and practices, which memorandum shall contain at least the information in the following subparagraphs:

- (a) the form number addressed by the actuarial memorandum shall be included;
- (b) a brief description of benefits provided shall be included;
- (c) a schedule of rates before and after the rate change shall be included;
- (d) a statement of the reason and basis for the rate change shall be included;

(e) a demonstration and certification by the qualified actuary shall be included to show that the past plus future expected experience after the rate change will result in an aggregate loss ratio equal to, or greater than, the required minimum aggregate loss ratio;

(i) this rate change and demonstration shall be based on the experience of the named form in Louisiana only, if that experience is credible.

(ii) the rate change and demonstration shall be based on experience of the named form nationwide, if the named form is used nationwide and the Louisiana experience is not credible, but the nationwide experience is credible.

(f) for policies or certificates in force less than three years, a demonstration shall be included to show that the third-year loss ratio is expected to be equal to, or greater than, the applicable percentage;

(g) a certification by the qualified actuary that the resulting premiums are reasonable in relation to the benefits provided shall be included;

(h) the memorandum shall be filed in duplicate;

(i) any additional information requested by the commissioner.

(3) An issuer of Medicare supplement policies and certificates issued before or after the effective date of Regulation 33 (Revised 1992) in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for the upcoming calendar year for approval by the commissioner no later than December 31. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years.

The actuarial memorandum filed for purposes of this Subsection shall contain all Medicare supplement plans issued by the issuer and shall not include rate adjustments. The memorandum shall be prepared, signed and dated by a qualified actuary in accordance with generally accepted actuarial principles and practices, and shall contain at least the information listed in the following subparagraphs:

- (a) the form number of each plan that the actuarial memorandum addresses;
- (b) plan type designation (for example: Plan A, Plan B, Pre-standardized);
- (c) the methodology for each plan;
- (d) identify filing as "ANNUAL MEDICARE SUPPLEMENT FILING" on the face page of the memorandum;
- (e) the memorandum shall be filed in duplicate;
- (f) any additional information requested by the commissioner.

(4) As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of

Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with the applicable filing procedures of this state:

(a)(i) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

(ii) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(iii) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this Section.

(b) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public Hearings. The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of Regulation 33 as revised July 20, 1992 if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the commissioner.

#### **Section 14. Filing and Approval of Policies and Certificates and Premium Rates**

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

B. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

C.(1) Except as provided in Paragraph (2) of this Subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the commissioner, up to four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(a) the inclusion of new or innovative benefits;

(b) the addition of either direct response or agent marketing methods;

(c) the addition of either guaranteed issue or underwritten coverage;

(d) the offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this Section, a *Type* means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

D.(1) Except as provided in Paragraph (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.

(a) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph (a) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this Subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Paragraph (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

E.(1) Except as provided in Paragraph (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined

for purposes of the refund or credit calculation prescribed in Section 13 of this regulation.

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

#### **Section 15. Permitted Compensation Arrangements**

A. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five renewal years.

C. No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

D. For purposes of this Section, *Compensation* includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

#### **Section 16. Required Disclosure Provisions**

##### **A. General Rules**

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to pre-existing conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Pre-existing Condition Limitations."

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6)(a) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons, eligible for Medicare shall provide to those applicants a *Guide to Health Insurance for People with Medicare* in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12-point type. Delivery of the guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this regulation. Except in the case of direct response issuers, delivery of the guide shall be made to the applicant at the time of application and acknowledgment of receipt of the guide shall be obtained by the issuer. Direct response issuers shall deliver the guide to the applicant upon request but not later than at the time the policy is delivered.

(b) For the purposes of this Section, *form* means the language, format, type size, type proportional spacing, bold character, and line spacing.

##### **B. Notice Requirements**

(1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. The notice shall:

(a) include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

(b) inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices shall not contain or be accompanied by any solicitation.

##### **C. Outline of Coverage Requirements for Medicare Supplement Policies**

(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of the outline from the applicant; and

(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12-point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this Section consists of four parts: a cover page; premium information; disclosure pages; and charts displaying the features of all benefit plans available by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than 12-point type. All plans A-J shall be shown on the cover page, and each Medicare supplement policy and certificate currently available by an issuer shall be prominently identified. Premium information for plans that are available shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are available to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The following items shall be included in the outline of coverage in the order prescribed below.

[COMPANY NAME]

Outline of Medicare Supplement Coverage--Cover Page:

Benefit Plan(s) \_\_\_\_\_ [insert letter(s) of plan(s) available by the issuer]

Medicare supplement insurance can be sold in only 10 standard plans. This chart shows the benefits included in each plan. Every company must make available Plan "A." Some plans may not be available in your state.

**BASIC BENEFITS:** Included in All Plans.

**Hospitalization:** Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

**Medical Expenses:** Part B coinsurance (Generally, 20 percent) of Medicare-approved expenses).

**Blood:** First three pints of blood each year.

A	B	C	D	E
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible		
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery	
				Preventive Care

F	G	H	I	J
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance
Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
Part B Deductible				Part B Deductible
Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
	At-Home Recovery		At-Home Recovery	At-Home Recovery
		Basic Drugs (\$1,250 Limit)	Basic Drugs (\$1,250 Limit)	Extended Drugs (3,000 Limit)
				Preventive Care

**PREMIUM INFORMATION [Boldface Type]**

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this state. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

**DISCLOSURES [Boldface Type]**

Use this outline to compare benefits and premiums among policies.

**READ YOUR POLICY VERY CAREFULLY [Boldface Type]**

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

**RIGHT TO RETURN POLICY [Boldface Type]**

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

**POLICY REPLACEMENT [Boldface Type]**

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

**NOTICE [Boldface Type]**

This policy may not fully cover all of your medical costs.

[for agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]

[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage.

Contact your local Social Security Office or consult "The Medicare Handbook" for more details.

**COMPLETE ANSWERS ARE VERY IMPORTANT [Boldface Type]**

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this Paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 9D of this regulation.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.]

**PLAN A**  
**MEDICARE (PART A) --HOSPITAL SERVICES--PER BENEFIT PERIOD**  
 \*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[760]	\$0	\$[760](Part A Deductible)
61st thru 90th day	All but \$[190] a day	\$[190] a day	\$0
91st day and after:			
--While using 60 lifetime reserve days	All but \$[380] a day	\$[380] a day	\$0
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0
--Beyond the Additional 365 days	\$0	\$0	All Costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[95] a day	\$0	Up to \$[95] a day
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

**PLAN A**  
**MEDICARE (PART B) --MEDICAL SERVICES--PER CALENDAR YEAR**  
 \*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES*</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	Generally, 80%	Generally, 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All Costs
<b>BLOOD</b>			
First 3 pints	\$0	All Costs	\$0
Next \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

**PARTS A and B**

<b>HOME HEALTH CARE MEDICARE APPROVED SERVICES</b>			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0

**PLAN B**  
**MEDICARE (PART A) --HOSPITAL SERVICES--PER BENEFIT PERIOD**  
 \*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[760]	\$[760](Part A Deductible)	\$0
61st thru 90th day	All but \$[190] a day	\$[190] a day	\$0
91st day and after:			
--While using 60 lifetime reserve days	All but \$[380] a day	\$[380] a day	\$0
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0
--Beyond the Additional 365 days	\$0	\$0	All Costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			

First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[95] a day	\$0	Up to \$[95] a day
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

PLAN B

MEDICARE (PART B) --MEDICAL SERVICES--PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES*</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	Generally, 80%	Generally, 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All Costs
<b>BLOOD</b>			
First 3 pints	\$0	All Costs	\$0
Next \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

PARTS A and B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0

PLAN C

MEDICARE (PART A) --HOSPITAL SERVICES--PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[760]	\$[760](Part A Deductible)	\$0
61st thru 90th day	All but \$[190] a day	\$[190] a day	\$0
91st day and after:			
--While using 60 lifetime reserve days	All but \$[380] a day	\$[380] a day	\$0
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses \$0	\$0
--Beyond the Additional 365 days	\$0		All Costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[95] a day	Up to \$[95] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance



PLAN C

MEDICARE (PART B) --MEDICAL SERVICES--PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

MEDICAL EXPENSES* IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.			
SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
First \$100 of Medicare Approved Amounts*	\$0	\$100(Part B Deductible)	\$0
Remainder of Medicare Approved Amounts	Generally, 80%	Generally, 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All Costs
<b>BLOOD</b>			
First 3 pints	\$0	All Costs	\$0
Next \$100 of Medicare Approved Amounts*	\$0	\$100(Part B Deductible)	\$0
Remainder of Medicare Approved Amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A and B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment			
First \$100 of Medicare Approved Amounts*	\$0	\$100(Part B Deductible)	\$0
Remainder of Medicare Approved Amounts	80%	20%	\$0

OTHER BENEFITS--NOT COVERED BY MEDICARE

FOREIGN TRAVEL--NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PLAN D

MEDICARE (PART A) --HOSPITAL SERVICES--PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[760]	\$[760](Part A Deductible)	\$0
61st thru 90th day	All but \$[190] a day	\$[190] a day	\$0
91st day and after:			
--While using 60 lifetime reserve days	All but \$[380] a day	\$[380] a day	\$0
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0
--Beyond the Additional 365 days	\$0	\$0	All Costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[95] a day	Up to \$[95] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respice care	\$0	Balance

PLAN D

MEDICARE (PART B) --MEDICAL SERVICES--PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES*</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	Generally, 80%	Generally, 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All Costs
<b>BLOOD</b>			
First 3 pints	\$0	All Costs	\$0
Next \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

(continued)

PLAN D (continued)  
PARTS A and B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE MEDICARE APPROVED SERVICES</b>			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
<b>AT-HOME RECOVERY SERVICES--NOT COVERED BY MEDICARE</b> Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
--Benefit for each visit	\$0	Actual Charges to \$40 a visit	Balance
--Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	\$0	Up to the number of Medicare Approved visits, not to exceed 7 each week	
--Calendar year maximum	\$0	\$1,600	

OTHER BENEFITS--NOT COVERED BY MEDICARE

<b>FOREIGN TRAVEL--NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PLAN E

MEDICARE (PART A) --HOSPITAL SERVICES--PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[760]	\$[760](Part A Deductible)	\$0
61st thru 90th day	All but \$[190] a day	\$[190] a day	\$0
91st day and after:			
--While using 60 lifetime reserve days	All but \$[380] a day	\$[380] a day	\$0
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0
--Beyond the Additional 365 days	\$0	\$0	All Costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[95] a day	Up to \$[95] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services			
	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

PLAN E

MEDICARE (PART B) --MEDICAL SERVICES--PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES*</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	Generally, 80%	Generally, 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All Costs
<b>BLOOD</b>			
First 3 pints	\$0	All Costs	\$0
Next \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A and B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
Remainder of Medicare approved Amounts	80%	20%	\$0

(continued)

PLAN E (continued)

OTHER BENEFITS--NOT COVERED BY MEDICARE

FOREIGN TRAVEL--NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
<b>PREVENTIVE MEDICAL CARE BENEFIT--NOT COVERED BY MEDICARE</b>			
Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First \$120 each calendar year	\$0	\$120	\$0
Additional charges	\$0	\$0	All Costs

PLAN F

MEDICARE (PART A) --HOSPITAL SERVICES--PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[760]	\$[760] (Part A Deductible)	\$0
61st thru 90th day	All but \$[190] a day	\$[190] a day	\$0
91st day and after:			
--While using 60 lifetime reserve days	All but \$[380] a day	\$[380] a day	\$0
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0
--Beyond the Additional 365 days	\$0	\$0	All Costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[95] a day	Up to \$[95] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services			
	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

PLAN F

MEDICARE (PART B) --MEDICAL SERVICES--PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES*</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.			
First \$100 of Medicare Approved Amounts*	\$0	\$100(Part B Deductible)	\$0
Remainder of Medicare Approved Amounts	Generally, 80%	Generally, 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	All Costs	\$0
<b>BLOOD</b>			
First 3 pints	\$0	All Costs	\$0
Next \$100 of Medicare Approved Amounts*	\$0	\$100(Part B Deductible)	\$0
Remainder of Medicare Approved Amounts	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES</b>			
	100%	\$0	\$0

PARTS A and B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment			
First \$100 of Medicare Approved Amounts*	\$0	\$100(Part B Deductible)	\$0
Remainder of Medicare Approved Amounts	80%	20%	\$0

OTHER BENEFITS--NOT COVERED BY MEDICARE

FOREIGN TRAVEL--NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PLAN G

MEDICARE (PART A) --HOSPITAL SERVICES--PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[760]	\$[760](Part A Deductible)	\$0
61st thru 90th day	All but \$[190] a day	\$[190] a day	\$0
91st day and after:			
--While using 60 lifetime reserve days	All but \$[380] a day	\$[380] a day	\$0
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0
--Beyond the Additional 365 days	\$0	\$0	All Costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All Approved amounts	\$0	\$0
21st thru 100th day	All but \$[95] a day	Up to \$[95] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services			
	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

PLAN G

MEDICARE (PART B) --MEDICAL SERVICES--PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES*</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	Generally, 80%	Generally, 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	80%	20%
<b>BLOOD</b>			
First 3 pints	\$0	All Costs	\$0
Next \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PLAN G (continued)  
PARTS A and B

(continued)

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE MEDICARE APPROVED SERVICES</b>			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
<b>AT-HOME RECOVERY SERVICES--NOT COVERED BY MEDICARE</b> Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
--Benefit for each visit	\$0	Actual Charges to \$40 a visit	Balance
--Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	\$0	Up to the number of Medicare Approved visits, not to exceed 7 each week	
--Calendar year maximum	\$0	\$1,600	

OTHER BENEFITS--NOT COVERED BY MEDICARE

<b>FOREIGN TRAVEL--NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PLAN H

MEDICARE (PART A) --HOSPITAL SERVICES--PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[760]	\$[760](Part A Deductible)	\$0
61st thru 90th day	All but \$[190] a day	\$[190] a day	\$0
91st day and after:			
--While using 60 lifetime reserve days	All but \$[380] a day	\$[380] a day	\$0
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0
--Beyond the Additional 365 days	\$0	\$0	All Costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[95] a day	Up to \$[95] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services			
	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

PLAN H

MEDICARE (PART B) --MEDICAL SERVICES--PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES*</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	Generally, 80%	Generally, 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All Costs
<b>BLOOD</b>			
First 3 pints	\$0	All Costs	\$0
Next \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A and B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE MEDICARE APPROVED SERVICES</b>			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment			\$100(Part B Deductible)
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0

(continued)

PLAN H (continued)

OTHER BENEFITS--NOT COVERED BY MEDICARE

<b>FOREIGN TRAVEL--NOT COVERED BY MEDICARE</b>			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
<b>BASIC OUTPATIENT PRESCRIPTION DRUGS--NOT COVERED BY MEDICARE</b>			
First \$250 each calendar year	\$0	\$0	\$250
Next \$2,500 each calendar year	\$0	50--\$1,250 calendar year maximum benefit	50%
Over \$2,500 each calendar year	\$0	\$0	All Costs

PLAN I

MEDICARE (PART A) --HOSPITAL SERVICES--PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[760]	\$[760](Part A Deductible)	\$0
61st thru 90th day	All but \$[190] a day	\$[190] a day	\$0
91st day and after:			
--While using 60 lifetime reserve days	All but \$[380] a day	\$[380] a day	\$0
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0
--Beyond the Additional 365 days	\$0	\$0	All Costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[95] a day	Up to \$[95] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

PLAN I

MEDICARE (PART B) --MEDICAL SERVICES--PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES*</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	Generally, 80%	Generally, 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	All Costs	\$0
<b>BLOOD</b>			
First 3 pints	\$0	All Costs	\$0
Next \$100 of Medicare Approved Amounts*	\$0	\$0	\$100(Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

(continued)

PLAN I (continued)  
PARTS A and B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE MEDICARE APPROVED SERVICES</b>			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment			\$100(Part B Deductible)
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$0
Remainder of Medicare Approved Amounts	80%	20%	\$0
<b>AT-HOME RECOVERY SERVICES--NOT COVERED BY MEDICARE</b> Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
--Benefit for each visit	\$0	Actual Charges to \$40 a visit	Balance
--Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	\$0	Up to the number of Medicare Approved visits, not to exceed 7 each week \$1,600	
--Calendar year maximum	\$0		

OTHER BENEFITS--NOT COVERED BY MEDICARE

<b>FOREIGN TRAVEL--NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
<b>BASIC OUTPATIENT PRESCRIPTION DRUGS--NOT COVERED BY MEDICARE</b>			
First \$250 each calendar year	\$0	\$0	\$250
Next \$2,500 each calendar year	\$0	50%--\$1,250 calendar year maximum benefit	50%
Over \$2,500 each calendar year	\$0	\$0	All Costs

PLAN J

MEDICARE (PART A) --HOSPITAL SERVICES--PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[760]	\$[760](Part A Deductible)	\$0
61st thru 90th day	All but \$[190] a day	\$[190] a day	\$0
91st day and after:			
--While using 60 lifetime reserve days	All but \$[380] a day	\$[380] a day	\$0
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses \$0	\$0
--Beyond the Additional 365 days	\$0		All Costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[95] a day	Up to \$[95] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

PLAN J

MEDICARE (PART B) --MEDICAL SERVICES--PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES*</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.			
First \$100 of Medicare Approved Amounts*	\$0	\$100(Part B Deductible)	\$0
Remainder of Medicare Approved Amounts	Generally, 80%	Generally, 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	All Costs	\$0
<b>BLOOD</b>			
First 3 pints	\$0	All Costs	\$0
Next \$100 of Medicare Approved Amounts*	\$0	\$100(Part B Deductible)	\$0
Remainder of Medicare Approved Amounts	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES</b>			
	100%	\$0	\$0

PARTS A and B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment			
First \$100 of Medicare Approved Amounts*	\$0	\$100(Part B Deductible)	\$0
Remainder of Medicare Approved Amounts	80%	20%	\$0

PLAN J (continued)  
PARTS A and B (continued)

(continued)

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE(cont'd.)</b> <b>AT-HOME RECOVERY SERVICES--NOT COVERED BY MEDICARE</b> Home care certified by our doctor, for personal care beginning during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
--Benefit for each visit	\$0	Actual Charges to \$40 a visit	Balance
--Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	\$0	Up to the number of Medicare Approved visits, not to exceed 7 each week \$1,600	
--Calendar year maximum	\$0		

OTHER BENEFITS--NOT COVERED BY MEDICARE

<b>FOREIGN TRAVEL--NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
First \$250 each calendar year	\$0	\$0	\$250
Next \$6,000 each calendar year	\$0	50%--\$3,000 calendar year maximum benefit	50%
Over \$6,000 each calendar year	\$0	\$0	All Costs
<b>PREVENTIVE MEDICAL CARE BENEFIT--NOT COVERED BY MEDICARE</b> Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First \$120 each calendar year	\$0	\$120	\$0
Additional charges	\$0	\$0	All Costs

D. Notice Regarding Policies or Certificates Which are Not Medicare Supplement Policies.

(1) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy, a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. 1395 et seq.), disability income policy; or other policy identified in Section 3.B of this regulation, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than 12-point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the *Guide to Health Insurance for People with Medicare* available from the company."

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection D(1) shall disclose, using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.



**Section 17. Requirements for Application Forms and Replacement Coverage**

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 Medicare supplement or other health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

An application for a medicare supplement policy shall not be combined with an application for any other type of insurance coverage. The application may not make reference to or include questions regarding other types of insurance coverage except for those questions specifically required under this Section.

[Statements]

(1) You do not need more than one Medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(4) The benefits and premiums under your Medicare supplement policy can be suspended, if requested during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstated if requested within 90 days of losing Medicaid eligibility.

(5) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

[Questions]

To the best of your knowledge,

(1) Do you have another Medicare supplement policy or certificate in force?

(a) If so, with which company?

(b) If so, do you intend to replace your current Medicare supplement policy with this policy [certificate]?

(2) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?

(a) If so, with which company?

(b) What kind of policy?

(3) Are you covered for medical assistance through the state Medicaid program:

(a) as a Specified Low-Income Medicare Beneficiary (SLMB)?

(b) as a Qualified Medicare Beneficiary (QMB)?

(c) for other Medicaid medical benefits?

B. Agents 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. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than 12-point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT 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 terminate existing Medicare supplement insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement coverage because you intend to terminate your existing Medicare supplement coverage. The replacement policy is being purchased for the following reason (check one):

- Additional benefits.
- No change in benefit, but lower premiums.
- Fewer benefits and lower premiums.
- Other. (please specify)

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 of a claim for 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, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to pre-existing conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) to the extent such time was spent (depleted) under the original policy.

3. If, 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 and 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, review it carefully to be certain that all information has

been properly recorded. [If the policy or certificate is guaranteed issue, this Paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

\_\_\_\_\_  
(Signature of Agent, Broker or Other Representative)\*  
[Typed Name and Address of Issuer, Agent or Broker]

\_\_\_\_\_  
(Applicant's Signature)

\_\_\_\_\_  
(Date)

\*Signature not required for direct response sales.

F. Paragraphs 1 and 2 of the replacement notice (applicable to pre-existing conditions) may be deleted by an issuer if the replacement does not involve application of a new pre-existing condition limitation.

### **Section 18. Filing Requirements for Advertising**

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio or television medium to the commissioner of Insurance of this state for review and approval by the commissioner to the extent permitted under the *Insurance Code*, particularly under R.S. 22:1215.

### **Section 19. Standards for Marketing**

A. An issuer, directly or through its producers, shall:

(1) establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate;

(2) establish marketing procedures to assure excessive insurance is not sold or issued;

(3) display prominently by type, stamp or other appropriate means, on the first page of the policy the following:

"Notice to buyer: This policy may not cover all of your medical expenses."

(4) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance;

(5) establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in R.S. 22:1211 et seq. the following acts and practices are prohibited:

(1) **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.

(2) **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.

(3) **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 agent or insurance company.

C. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

D. No insurer providing Medicare supplement insurance in this state shall allow its agent to accept premiums except by check, money order, or bank draft made payable to the insurer. If payment in cash is made, the agent must leave the insurer's official receipt with the insured or the person paying the premium on behalf of the insured. This receipt shall bind the insurer for the monies received by the agent.

Under this Section, the agent is prohibited from accepting checks, money orders and/or bank drafts payable to the agent or his agency. The agent is not to leave any receipt other than the insurer's for premium paid in cash.

### **Section 20. Appropriateness of Recommended Purchase and Excessive Insurance**

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

B. Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

### **Section 21. Reporting of Multiple Policies**

A. On or before March 1 of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate:

- (1) policy and certificate number, and
- (2) date of issuance.

B. The items set forth above must be grouped by individual policyholder.

### **Section 22. Prohibition Against Pre-existing Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates**

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to pre-existing conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods and probationary periods.

### **Section 23. Separability**

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

### **Section 24. Effective Date**

The revisions to this regulation shall become effective on January 20, 1998.

# Appendix A

## MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR \_\_\_\_\_

Type<sup>1</sup> \_\_\_\_\_ SMSBP<sup>2</sup> \_\_\_\_\_  
 For the State of \_\_\_\_\_ Company Name \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
 Address \_\_\_\_\_ Person Completing Exhibit \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

	(a) Earned Premium <sup>3</sup>	(b) Incurred Claims <sup>4</sup>
line ----		

1. Current Year's Experience
  - a. Total (all policy years) \_\_\_\_\_
  - b. Current year's issues<sup>5</sup> \_\_\_\_\_
  - c. Net (for reporting purposes =  
1a - 1b) \_\_\_\_\_
2. Past Years' Experience (All Policy Years) \_\_\_\_\_
3. Total Experience  
(Net Current Year + Past Year's (Experience) \_\_\_\_\_
4. Refunds Last Year (Excluding Interest) \_\_\_\_\_
5. Previous Since Inception (Excluding Interest) \_\_\_\_\_
6. Refunds Since Inception (Excluding Interest) \_\_\_\_\_
7. Benchmark Ratio Since Inception  
(SEE WORKSHEET FOR RATIO 1) \_\_\_\_\_
8. Experienced Ratio Since Inception \_\_\_\_\_  
  
 Total Actual Incurred Claims (line 3, col. b) = Ratio 2  
 -----  
 Total Earned Prem. (line 3, col. a) - Refunds Since Inception (line 6)
9. Life Years Exposed Since Inception \_\_\_\_\_  
 If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.
10. Tolerance Permitted (obtained from credibility table) \_\_\_\_\_

**Medicare Supplement Credibility Table**

Life Years Exposed <u>Since Inception</u>	<u>Tolerance</u>
10,000 +	0.0%
5,000 - 9,999	5.0%
2,500 - 4,999	7.5%
1,000 - 2,499	10.0%
500 - 999	15.0%

If less than 500, no credibility.

## MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR \_\_\_\_\_

Type<sup>1</sup> \_\_\_\_\_ SMSBP<sup>2</sup> \_\_\_\_\_  
 For the State of \_\_\_\_\_ Company Name \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
 Address \_\_\_\_\_ Person Completing Exhibit \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

11. Adjustment to Incurred Claims for Credibility \_\_\_\_\_

Ratio 3 = Ratio 2 + Tolerance

If Ratio 3 is more than Benchmark Ratio (Ratio 1), a refund or credit to premium is not required.

If Ratio 3 is less than the Benchmark Ratio, then proceed.

12. Adjusted Incurred Claims \_\_\_\_\_

[Total Earned Premiums (line 3, col. a) - Refunds Since Inception (line 6)] X Ratio 3 (line 11)

13. Refund = Total Earned Premiums (line 3, col. a) - Refunds Since Inception (line 6) -

Adjusted Incurred Claims (line 12)

-----  
 Benchmark Ratio (Ratio 1) \_\_\_\_\_

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.

<sup>1</sup>Individual, group, individual Medicare Select, or group Medicare Select only  
<sup>2</sup>"SMSBP" = Standardized Medicare Supplement Benefit Plan  
<sup>3</sup>Includes Modal Loadings and Fees Charged  
<sup>4</sup>Excludes Active Life Reserves  
<sup>5</sup>This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios"

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
 Signature  
 \_\_\_\_\_  
 Name - Please Type  
 \_\_\_\_\_  
 Title  
 \_\_\_\_\_  
 Date

REPORTING FORM FOR THE CALCULATION OF BENCHMARK  
RATIO SINCE INCEPTION FOR **GROUP** POLICIES  
FOR CALENDAR YEAR \_\_\_\_\_

Type<sup>1</sup> \_\_\_\_\_ SMSBP<sup>2</sup> \_\_\_\_\_  
 For the State of \_\_\_\_\_ Company Name \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
 Address \_\_\_\_\_ Person Completing Exhibit \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

(a) <sup>3</sup>	(b) <sup>4</sup>	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o) <sup>5</sup>
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception:  $(l + n)/(k + m)$ : \_\_\_\_\_

<sup>1</sup>Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

<sup>2</sup>"SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans

<sup>3</sup>Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

<sup>4</sup>For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

<sup>5</sup>These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

REPORTING FORM FOR THE CALCULATION OF BENCHMARK  
RATIO SINCE INCEPTION FOR **INDIVIDUAL** POLICIES  
FOR CALENDAR YEAR \_\_\_\_\_

Type<sup>1</sup> \_\_\_\_\_ SMSBP<sup>2</sup> \_\_\_\_\_  
 For the State of \_\_\_\_\_ Company Name \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
 Address \_\_\_\_\_ Person Completing Exhibit \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

(a) <sup>3</sup>	(b) <sup>4</sup>	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o) <sup>5</sup>
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception:  $(l + n)/(k + m)$ : \_\_\_\_\_

<sup>1</sup>Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

<sup>2</sup>"SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans

<sup>3</sup>Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2

is 1989, etc.)<sup>4</sup>For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.<sup>5</sup>These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

**Appendix B**  
FORM FOR REPORTING  
MEDICARE SUPPLEMENT POLICIES

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Due: March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare Supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and Certificate #	Date of Issuance

\_\_\_\_\_ Signature

\_\_\_\_\_ Name and Title (please type)

\_\_\_\_\_ Date

**Appendix C**  
DISCLOSURE STATEMENTS

Instructions for Use of the Disclosure Statements for  
Health Insurance Policies Sold to Medicare Beneficiaries  
that Duplicate Medicare

1. Federal law, P.L. 103-432, prohibits the sale of a health insurance policy (the term policy or policies includes certificates) that duplicate Medicare benefits unless it will pay benefits without regard to other health coverage and it includes the prescribed disclosure statement on or together with the application.

2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).

3. State and federal law prohibits insurers from selling a Medicare Supplement policy to a person that already has a Medicare Supplement policy except as a replacement.

4. Property/casualty and life insurance policies are not considered health insurance.

5. Disability income policies are not considered to provide benefits that duplicate Medicare.

6. The federal law does not pre-empt state laws that are more stringent than the federal requirements.

7. The federal law does not pre-empt existing state from filing requirements.

**THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when it pays:**

C hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

C hospitalization

C physician services

C other approved items and services

**Before You Buy This Insurance**

T Check the coverage in **all** health insurance policies you already have.

T For more information about Medicare and Medicare Supplement insurance, view the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

T For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that provide benefits for specified limited services]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when:**

C any of the services covered by the policy are also covered by Medicare

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- C hospitalization
- C physician services
- C other approved items and services

**Before You Buy This Insurance**

- T Check the coverage in **all** health insurance policies you already have.
- T For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- T For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that reimburse expenses incurred for specified disease(s) or other specified impairment(s). This includes expense incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when it pays:**

- C hospital or medical expenses up to the maximum stated in the policy

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- C hospitalization
- C physician services
- C hospice
- C other approved items and services

**Before You Buy This Insurance**

- T Check the coverage in **all** health insurance policies you already have.
- T For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- T For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- C hospitalization
- C physician services
- C hospice
- C other approved items and services

**Before You Buy This Insurance**

- T Check the coverage in **all** health insurance policies you already have.
- T For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- T For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that provide benefits for both expenses incurred and fixed indemnity basis]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when:**

- C any expenses or services covered by the policy are also covered by Medicare; or
- C it pays the fixed dollar amount stated in the policy and Medicare covers the same event

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- C hospitalization
- C physician services
- C hospice
- C other approved items and services

**Before You Buy This Insurance**

- T Check the coverage in **all** health insurance policies you already have.
- T For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- T For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that provide benefits for both expenses incurred and fixed indemnity basis]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when:**

- C any expenses or services covered by the policy are also covered by Medicare; or
- C it pays the fixed dollar amount stated in the policy and Medicare covers the same event

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- C hospitalization
- C physician services
- C hospice care
- C other approved items and services

**Before You Buy This Insurance**

- T Check the coverage in **all** health insurance policies you already have.
- T For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- T For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For long-term care policies providing both nursing home and noninstitutional coverage]



**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

**This is not Medicare Supplement Insurance**

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

This is long-term care insurance that provides benefits for covered nursing home and home care services.

C In some situations Medicare pays for short periods of skilled nursing home care, limited home health services and hospice care.

C This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Neither Medicare nor Medicare Supplement insurance provides benefits for most long-term care expenses.**

**Before You Buy This Insurance**

T Check the coverage in **all** health insurance policies you already have.

T For more information about long-term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.

T For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

T For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies providing nursing home benefits only]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

**This is not Medicare Supplement Insurance**

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

C This insurance provides benefits primarily for covered nursing home services.

C In some situations Medicare pays for short periods of skilled nursing home care and hospice care.

C This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Neither Medicare nor Medicare Supplement insurance provides benefits for most nursing home expenses.**

**Before You Buy This Insurance**

T Check the coverage in **all** health insurance policies you already have.

T For more information about long-term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.

T For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

T For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies providing home care benefits only]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

**This is not Medicare Supplement Insurance**

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

C This insurance provides benefits primarily for covered home care services.

C In some situations, Medicare will cover some health related services in your home and hospice care which may also be covered by this insurance.

C This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Neither Medicare nor Medicare Supplement insurance provides benefits for most services in your home.**

**Before You Buy This Insurance**

T Check the coverage in **all** health insurance policies you already have.

T For more information about long-term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.

T For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

T For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For other health insurance policies not specifically identified in the previous statements]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

**This is not Medicare Supplement Insurance**

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when it pays:**

C the benefits stated in the policy and coverage for the same event is provided by Medicare

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- C hospitalization
- C physician services
- C hospice care
- C other approved items and services

**Before You Buy This Insurance**

- T Check the coverage in **all** health insurance policies you already have.
- T For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- T For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

James H. "Jim" Brown  
Commissioner

9801#011

**RULE**

**Department of Natural Resources  
Office of Conservation**

Austin Chalk Formation (LAC 43:XIX.Chapter 43)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Natural Resources, Office of Conservation adopts Statewide Order No. 29-S (LAC 43:XIX.Subpart 18.Chapter 43).

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of Conservation: General Operations  
Subpart 18. Statewide Order No. 29-S**

**Chapter 43. Austin Chalk Formation**

**§4301. Scope**

This Statewide Order provides rules and regulations governing the drilling of horizontal wells in the Austin Chalk Formation in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:102 (January 1998).

**§4303. Definitions**

Unless the context otherwise requires, the words defined in §4303 shall have the following meaning when found in this Statewide Order.

*Austin Chalk Formation Horizontal Well*—well with the wellbore drilled laterally at an angle of at least 80E to the vertical and with a horizontal displacement of at least 50 feet in the Austin Chalk Formation measured from the initial point of penetration into the Austin Chalk.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:102 (January 1998).

**§4305. Order**

From and after the effective date hereof, permission to develop the Austin Chalk Formation in the state of Louisiana by the use of horizontal wells may be obtained as hereinafter provided and upon strict compliance with the procedures set forth herein.

1. The restriction on tubing size as set forth in LAC 43:XIX.109.E.1 of Statewide Order No. 29-B shall not apply to Austin Chalk Formation horizontal wells.

2. Statewide Order No. 29-E well spacing rules shall not apply to Austin Chalk Formation horizontal wells. The following well spacing rules shall apply to Austin Chalk Formation horizontal wells in areas in which no spacing rules for Austin Chalk Formation horizontal wells have been established by special orders, provided that exceptions may be approved after a public hearing based on 10 days legal notice:

a. a subsequent Austin Chalk Formation horizontal well shall not be located so as to encroach into a rectangle formed by drawing north-south lines 3,000 feet east of the most easterly point and 3,000 feet west of the most westerly point and east-west lines 100 feet north of the most northerly point and 100 feet south of the most southerly point of any horizontal well completed in, drilling to, or for which a permit shall have been granted to drill to the Austin Chalk Formation. In the case of a single horizontal well, the point of entry into the Austin Chalk Formation (if available) is to be used in lieu of the surface location in determining the northern or southern boundary of the rectangle;

b. survey plats submitted with the application for permit to drill shall contain certification of the surveyor specifying compliance with this requirement;

c. multiple Austin Chalk Formation horizontal well laterals drilled into the same stratigraphic interval from a single wellbore will be treated as a single completion, even if the laterals are isolated by separate producing strings to the surface.

3. The gas allowable provisions of Statewide Order No. 29-F shall not apply to Austin Chalk Formation horizontal wells. Instead, Austin Chalk Formation horizontal wells shall be given an allowable based on the Maximum Efficient Rate (MER) of the well, being the maximum sustainable daily withdrawal rate from the reservoir which will permit economical development and depletion without causing waste. In the event an alternate unit well is authorized for any Austin Chalk Formation unit, such unit allowable shall be limited to the greater of the MER of the best well in said unit or the highest rate of withdrawal on a per acre basis of any unit in the same reservoir and field. If there is any complaint of waste or dispute relative to compliance with R.S. 30:11(B), the allowable assigned to an Austin Chalk Formation horizontal well shall be subject to adjustment after a public hearing based on 10 days legal notice.

a. Unless an exception is granted as provided herein, no allowable will be granted for a horizontal completion in the Austin Chalk Formation until a unit has been formed pursuant to an Office of Conservation Order for the well unless the operator agrees to escrow all monies received from pre-unitization production pending unitization and distribute such funds on the basis of the unit ultimately established.

b. The operator of a well may request an exception to this requirement for a well located on a large lease/voluntary unit or for other good cause shown.

c. The commissioner of Conservation will have the discretion to either approve or deny such application or require that the applicant request a public hearing to be held after 10 days legal notice to consider the matter.

4. The Office of Conservation's policy requiring a sand definition and production test in the field before units can be established shall not apply to Austin Chalk Formation horizontal wells.

5. The size and shape of units for Austin Chalk Formation horizontal wells should usually be based on the proposed design of the well because such units are expected to be developed by horizontal laterals which traverse the entire unit in a generally north-south direction. If the initial lateral in a drilling unit fails to provide full horizontal coverage in a north-south direction, additional horizontal laterals or wells drilled to acquire that coverage shall be considered and named unit wells rather than alternate unit wells. However, if any such additional unit well or lateral overlaps an existing unit well or lateral in an east-west direction, it shall be considered and named an alternate unit well. Overlaps shall be determined by use of a line parallel to the north and south unit boundaries. This provision shall only apply to Austin Chalk Formation horizontal wells and shall not be used as a precedent for any other formation.

6. The party who owns or controls the majority working interest in a drilling unit established for an Austin Chalk Formation horizontal well shall have the right to be designated the operator of such unit. Such ownership or control shall be

based on sworn testimony at the public hearing which creates the drilling unit. If the working interest ownership or control in a unit is not known or cannot be established with reasonable certainty when the unit is created, then the operator designation shall occur when a drilling permit is issued for the drilling of a well on the unit. The party requesting such drilling permit shall complete and file an affidavit corroborating such majority ownership or control on the affidavit form provided by the file in the Office of Conservation. It is provided, however, that any party designated as a unit operator can be removed or a working interest owner who does not own or control the majority in working interest can be designated as unit operator after a public hearing based on 10 days legal notice if it is demonstrated that the designated operator and/or majority working interest owner has not timely developed the unit, has not acted prudently, or that other good cause exists therefor.

7. Statewide Order No. 29-B requires that a directional survey be run on all wells which are directionally controlled and thereby intentionally deviated from the vertical. The requirement that a directional survey be run the entire length of the lateral in an Austin Chalk Formation horizontal well may be waived by the Office of Conservation if evidence is presented at the time such waiver is requested that the directional survey cannot reasonably reach the end of the lateral and that measuring from the point where the directional survey ends, the lateral of the well will still be:

a. within the spacing provisions for the unit upon which it has been drilled or, if a unit has not been established, under a tract for which authority to drill has been obtained, and

b. at least the distance from all offsetting wells required by applicable spacing rules or in the absence thereof, the provisions of §4305.A.2.

8. An application for permit to drill in an area affected by a pending application requesting the formation of one or more units will be issued without regard to the pending unitization proceedings. However, the permit so issued shall not be used at the hearing (only drilled wells may be considered), and the permit will be subject to the order issued as a result of such hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 24:102 (January 1998).

Warren A. Fleet  
Commissioner

9801#063

## **RULE**

### **Department of Public Safety and Corrections Corrections Services**

Juvenile Transfer to Adult  
Facility (LAC 22:I.335)

In accordance with the Administrative Procedure Act, R.S. 49:950 and in order to implement R.S. 15:9021, the Department of Public Safety and Corrections, Corrections

Services, hereby adopts regulations for transfer of juveniles to adult facilities.

## Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part I. Corrections

#### Chapter 3. Adult and Juvenile Services

##### Subchapter A. General

##### §335. Juvenile Transfer to Adult Facility

A. Purpose. To establish the secretary's policy regarding the limited transfer of juvenile offenders 17 years of age or older to adult facilities.

B. To Whom This Regulation Applies. LAC 22:I.335 is applicable to the deputy secretary, assistant secretaries, wardens, and director of the Division of Youth Services of the Department of Public Safety and Corrections.

##### C. Definitions

*Adult*—an individual convicted by a criminal court and sentenced to the custody of the Department of Public Safety and Corrections (DPS&C).

*Disposition*—the written order of the juvenile court, following adjudication, which specifies the court's sentence.

*Juvenile*—an individual who is adjudicated delinquent by a judge exercising juvenile jurisdiction and sentenced to the custody of the DPS&C.

##### D. Policy

1. It is the secretary's policy, in accordance with R.S. 15:902.1, to authorize the limited transfer of juveniles adjudicated delinquent to adult facilities when the juveniles have attained the age of 17 years and are otherwise eligible as defined by this regulation.

2. Juvenile offenders who are adjudicated delinquent for an offense that, if committed by an adult, could not result in a sentence at hard labor, are not eligible for transfer.

3. Generally, juvenile offenders will be transferred to one of the following adult facilities:

- a. Adult Reception and Diagnostic Center (ARDC);
- b. Elayn Hunt Correctional Center (EHCC);
- c. Wade Reception and Diagnostic Center (WRDC);
- d. David Wade Correctional Center (DWCC);
- e. Louisiana Correctional Institute for Women (LCIW).

4. Juvenile offenders in adult facilities will not have a parole or diminution of sentence release date.

a. They will only have a "full term date." This date will be either:

- i. their twenty-first birthday;
- ii. their eighteenth birthday if the crime was committed before their thirteenth birthday and it is not a crime enumerated under *Louisiana Children's Code*, Article 897.1;
- iii. the date upon which the juvenile has completed the period of commitment as specified in the judgment of the juvenile court; or
- iv. the date which reflects the maximum term that an adult could receive if sentenced for the same offense, whichever is earlier.

b. If the period of commitment specified by the juvenile court exceeds the twenty-first birthday, the eighteenth birthday under circumstances outlined, or the maximum term

for which an adult could be sentenced for the same crime, then the Office of Youth Development and the Headquarters Legal Section should be notified immediately.

5. Absent special statutory or regulatory restrictions to the contrary, juveniles in adult facilities will participate in all work, education, and other rehabilitative programs on the same basis as adults and will be subject to the same classification and disciplinary processes as adults, including custody status determination. Security supervision and security practices will also be the same for juvenile offenders in adult facilities as for adult inmates.

6. Records of juveniles housed in adult facilities shall be confidential and information may not be disclosed to anyone except in accordance with department Regulation No. B-03-003, "Access to and Release of Juvenile Offender and Ex-Offender Records," as set forth in R.S. 15:574.12 and *Louisiana Children's Code*, Article 412.

##### E. Procedures

1. A classification committee will be formed at all juvenile facilities to review offenders for eligibility and suitability for transfer and to make appropriate recommendations to the warden. It will be the responsibility of this committee to review all relevant information.

a. The offender shall be given 24-hour notice of the proposed transfer and shall be allowed to appear before the classification committee to provide input into the decision making process. He may select a staff representative to assist him in accordance with the process outlined in the "Disciplinary Rules and Procedures for Juvenile Offenders."

b. The following variables should be considered by the classification committee when evaluating a juvenile offender for possible transfer to an adult facility:

- i. chronological age of 17 years or older;
- ii. emotional and physical maturity;
- iii. disciplinary history and potential to disrupt juvenile institutional operations;
- iv. potential to benefit from educational programs;
- v. potential to benefit from other programs;
- vi. offenders diagnosed with mental health and/or medical special needs who can be better served in an adult facility;
- vii. offenders who pose a threat to security, i.e., who are considered escape risks, who have exhibited violent behavior, who are committed for serious offense(s), or who have an extensive criminal history;
- viii. to accomplish one of the following objectives:
  - (a). minimize risk to the public;
  - (b). minimize risk to institutional staff; and
  - (c). minimize risk to other offenders.

c. Disciplinary history may impact the recommendation, but the transfer itself is not a disciplinary sanction or disciplinary activity. The disciplinary committee can refer offenders to the classification committee for review.

2. The warden of each juvenile facility will review the recommendation made by the classification committee and will make the final determination relative to transfer. The secretary and assistant secretaries will be notified of any transfer. In addition, the warden will provide notification to the appropriate juvenile judge, Division of Youth Services office,

the legal guardian, and the classification administrator at ARDC, and WRDC. The notification must be given at least 72 hours prior to the proposed transfer, unless waived by the secretary or his designee.

3. Notification to the classification administrator at ARDC should include pertinent information, e.g., the Juvenile Information Reporting Management System (JIRMS) master record, judicial commitment documents, classification committee report and recommendation, and warden's decision. ARDC PreClass Section will then assign a unique six digit Department of Corrections (DOC) number to each juvenile-in-adult custody (such number will begin with the numeral seven followed by the juvenile's original JIRMS number), update the CAJUN II information, and establish the adult institutional record prior to transfer (except in emergency cases). The classification administrator will schedule the date of transfer and will notify the appropriate juvenile institution.

4. The sending facility will be responsible for the transportation of the offender to the appropriate receiving institution and will provide all institutional and medical records at the time of transfer in accordance with department Regulation No. B-06-001, "Health Care." The offender's personal funds should be transmitted by check at the time of transfer or as soon as possible thereafter. In addition, the JIRMS transfer screen will be updated to reflect the transfer and will be subsequently utilized for inquiry purposes.

5. Initial evaluation to determine appropriate housing while in the reception process should include evaluation of emotional and physical maturity.

6. ARDC, WRDC, or LCIW will conduct a full evaluation in accordance with department regulations and ACA Standards to determine subsequent placement at EHCC or DWCC (or suitable housing assignment at LCIW). The evaluation will include, but is not limited to, the following:

- a. emotional and physical maturity to evaluate the need for assignment to Level 1 or Level 2 protective custody;
- b. review of information previously generated by JRDC, as available;
- c. history of gang affiliation and prior juvenile institutional assignment and security history;
- d. special educational needs or other programming needs and the appropriateness of assignment to academic and/or vocational programs;
- e. medical needs, including substance abuse assessment, and assignment of an appropriate medical level of care;
- f. mental health needs with particular emphasis on suicide potential and assignment of an appropriate mental health level of care; and
- g. consideration of geographical location.

7. Upon completion of evaluation, the Transfer Section at ARDC will schedule transfer to the appropriate permanent facility.

8. The receiving institution will assign housing and provide services as set forth in department regulations and American Correctional Association (ACA) Standards. The records office of the receiving institution will maintain the juvenile institutional record and the adult inmate record and

will update the CAJUN database. Upon discharge, all institutional records will be returned to the Juvenile Reception and Diagnostic Center at Jetson Correctional Center for Youth.

9. The adult facility must report the location and condition of the juvenile to the juvenile court every six months (or more frequently if requested). This format may be utilized to make early release recommendations as appropriate.

10. Sex offender notifications are generally not applicable to juvenile offenders housed in adult facilities. Other crime victim notice requirements for juveniles as indicated in department Regulation No. C-01-007, "Crime Victims Services Bureau," are applicable.

11. Visiting lists will be established pursuant to the provisions of department Regulation No. C-03-006, "Inmate Visitation." These transfers are to be considered as new admissions for the purposes of §335.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:902.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 24:104 (January 1998).

Richard L. Stalder  
Secretary

9801#037

## RULE

### Department of Public Safety and Corrections Office of State Police Transportation and Environmental Safety Section

Explosive Code  
(LAC 55:I.1511-1543)

The Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit has amended rules pertaining to magazine construction requirements, general requirements of persons holding an explosives license, training, and drug testing requirements in the Explosive Code, LAC 55:I.Chapter 5, as authorized by R.S. 40:1472.1 et seq., and in accordance with R.S. 49:950 et seq.

The amendments consist primarily of technical changes to the above-mentioned sections.

## Title 55

### PUBLIC SAFETY

#### Part I. State Police

#### Chapter 15. Explosive Code

#### §1511. Magazine Construction Requirements

\*\*\*

K. A Type 3 magazine is a "day box" or other portable magazine. It must be theft-resistant, fire-resistant, and weather-resistant (does not have to be bullet-resistant).

1. Minimum specifications require that a "day box" be constructed of not less than 12-gauge (.1046 inch) (2.66 mm) steel or aluminum, lined with ½ inch (12.7 mm) hardboard or plywood. The door or lid must overlap the door opening by at

least 1 inch (25 mm). Hinges, hasps, and panels shall be welded, riveted, or bolted (with nuts on inside) so they cannot be removed or disassembled from the outside.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Office of State Police, 1974, amended and promulgated LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 24:105 (January 1998).

**§1531. General Requirements**

\* \* \*

B. It is the primary licensee's responsibility to control his explosives and the use thereof. The primary licensee must control his storage and keep an accurate and continuing inventory of all supplies as set forth in §1517. The primary licensee must employ only people of good judgment, who are careful and know how to handle explosives, to do the blasting for him. The primary licensee must be sure that his employees have a valid and subsisting blaster's license. The primary licensee must be certain that the license is issued under the name of himself or his company. The primary licensee should take all practical and necessary steps to ensure that his explosives are not finding their way into the hands of unauthorized persons. Licensed geophysical contractors may contract with licensed drilling contractors to possess and use explosives for the sole purpose of executing the contract between the two parties. All explosives shall be returned to the licensed geophysical contractor at the end of each day. For purposes of §1531, the transfer of the temporary possession of explosives between the contracting parties shall not constitute a sale. The safety and security of the explosives and the compliance with these regulations shall be the responsibility of the party to the contract who is in possession of the explosives. There shall be no requirement that the drilling contractor be licensed by each geophysical contractor with whom he contracts.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Office of State Police, 1974, amended and promulgated LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 24:106 (January 1998).

**§1541. Training**

\* \* \*

B. Training records required in §1541.B.1 below must be maintained at the licensee's local office.

1. Training shall be documented on a form or certificate to include location, subject, date of instruction, and to include the instructor's signature.

2. In addition to §1541.B.1 above, the training provider shall also document training by a written examination. These training records shall be retained by the training provider.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Office of State Police, 1974, amended and promulgated LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 24:106 (January 1998).

**§1543. Drug Testing Requirements**

\* \* \*

C. Any company whose licensee employee refuses or fails any drug test shall notify the deputy secretary of the Department of Public Safety and Corrections, Explosives Control Unit of this fact.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Office of State Police, at the Office of State Police, 1974, amended and promulgated LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 24:106 (January 1998).

Thomas Normile  
Undersecretary

9801#025

**RULE**

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

Electronic Benefits Transfer—Retailers  
and Cash Access (LAC 67:III.403 and 405)

The Department of Social Services, Office of Family Support has amended the *Louisiana Administrative Code*, Title 67:Part III.Subpart 1, General Administrative Procedures.

The 1997 Louisiana Legislative Session provided that recipients of Family Independence Temporary Assistance Program (FITAP) cash assistance may be charged usual and customary fees for accessing cash benefits at retail establishments. This rule establishes guidelines and other provisions regarding retail establishments and fees.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 1. General Administrative Procedures**

**Chapter 4. Electronics Benefits Issuance System**

**§403. Participation of Retailers Effective**

**October 1, 1997**

A. Retail establishments which are U.S. Department of Agriculture, Food and Consumer Service authorized food stamp benefit redemption points must be allowed the opportunity to participate in the state EBT system. All other retail establishments must be approved by the agency in order to participate in the cash access component of the system. Retailers approved by the agency to participate in cash access may be charged connection fees and/or monthly lease fees for electronic and telephone equipment lines necessary to establish connection to the EBT System.

B. Retail establishments found guilty of abuse, misuse or fraud of the system by using the EBT "Louisiana Purchase" card in a manner or intent contrary to the purpose of the card, in providing benefits to eligible recipients, shall be permanently disqualified from participating as a cash redemption point and shall have all equipment provided by the vendor disconnected and removed from the establishment after due process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:106 (January 1998).

**§405. Service Fees Effective October 1, 1997**

A. Recipients of cash assistance may be charged fees for accessing cash only benefits. Retailers may charge their usual and customary check cashing fee for providing cash only benefits to FITAP recipients under the following circumstances:

1. the recipient presents a valid EBT system card (known as the "Louisiana Purchase Automated Benefit Card"); and

2. the recipient is not using the card to obtain cash in conjunction with the purchase of goods or services through the EBT system.

B. Retailers may process cash transactions through the EBT system only while the system is available. Retailers shall not dispense cash to recipients using vouchers or other means of implied payment to the retailer.

C. Retailers are prohibited from recovering losses through the EBT system due to their errors that are discovered after the transaction is completed and the recipient has left the place of business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:450.1(C)(3), R.S. 46:231.13, R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support in LR 24:107 (January 1998).

Madlyn B. Bagneris  
Secretary

9801#040

**RULE**

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

Family Independence Temporary Assistance  
Program (FITAP)—Individual Development  
Account (LAC 67:III.1115)

The Department of Social Services, Office of Family Support (OFS) has amended the LAC 67:III.Subpart 2, the Family Independence Temporary Assistance Program (FITAP), which has replaced the Aid to Families with Dependent Children (AFDC) Program.

Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, empowered the state to establish a cash assistance program for the expenditure of

federal funds for the *Temporary Assistance to Needy Families Block Grant*. The 1997 Regular Session of the Louisiana Legislature passed legislation directing the Office of Family Support to allow FITAP recipients to maintain a special Individual Development Account. This rule defines the Individual Development Account which will be exempted as a resource.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 2. Family Independence Temporary Assistance Program (FITAP)**

**Chapter 11. Application, Eligibility and Furnishing Assistance**

**Subchapter B. Conditions of Eligibility**

**§1115. Resource Limit**

A. - B.3. ...

4. an Individual Development Account (IDA) which is a special account established in a financial institution for the purposes of work-related education or training. Only one IDA per assistance unit is allowed. The amount of the deposits cannot exceed \$6,000, excluding interest, and the balance of the account cannot exceed \$6,000, including interest, at any time. Deposits to the account may be made by the recipient, by a nonprofit organization, or by an individual contributor. OFS is not responsible for enforcing stipulations placed on the use of the money by a nonprofit organization or by an individual contributor. IDA funds may be used only for the following purposes:

a. educational expenses incurred at an accredited institution of higher education;

b. training costs incurred for a training program approved by the agency; or

c. payments for work-related expenses, such as clothing, tools or equipment approved by the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:443 and R.S. 46:460.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), amended by the Department of Social Services, Office of Family Support, LR 19:1340 (October 1993), LR 24:107 (January 1998).

Madlyn B. Bagneris  
Secretary

9801#041

**RULE**

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

Food Stamps—Deductions and Case  
Actions (LAC 67:III.1701 and Chapter 19)

The Department of Social Services, Office of Family Support has amended the *Louisiana Administrative Code*, Title 67, Part III, Subpart 3, Food Stamps.

Under authority granted by the United States Department of Agriculture (USDA), Food and Consumer Service, the Food

Stamp Program has established a mandatory standard utility allowance and basic utility allowance in the eligibility determination process. The option to establish mandatory standards was offered to state agencies under Section 809 of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The agency also revised the sequence of certain actions in the process of reducing or terminating a recipient's benefits. USDA approved a waiver which allows the agency to send a notice of adverse action, in lieu of a notice of expiration, when the agency becomes aware of a change in a household's circumstances but does not have all the information needed to process the change.

Program authority in §1701 has been amended to include appropriate state legislation.

**Title 67**  
**SOCIAL SERVICES**  
**Part III. Office of Family Support**  
**Subpart 3. Food Stamps**

**Chapter 17. Administration**

**Subchapter A. General Provisions**

**§1701. Authority**

The Food Stamp Program is administered under the authority of applicable federal and state laws.

**AUTHORITY NOTE:** Promulgated in accordance with applicable sections of 7 CFR and R.S. 36:474.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 17:1226 (December 1991), amended LR 24:108 (January 1998).

**Chapter 19. Certification of Eligible Households**

**Subchapter I. Income and Deductions**

**§1965. Standard Utility Allowance (SUA)**

A. Households which incur heating or cooling costs separate and apart from their rent or mortgage use a mandatory single Standard Utility Allowance (SUA) in the determination of shelter costs and deductions. To be qualified, the household must be billed on a regular basis for heating or cooling costs. However, during the heating season a household that is billed less often than monthly, but is eligible to use the standard allowance, may continue to use the standard allowance between billing months. The SUA is available to those households receiving energy assistance payments or reimbursements but who continue to incur heating or cooling costs that exceed the payment during any month covered by the certification period.

B. Any household living in a housing unit which has central utility meters and which charges the household for excess utility costs only, shall not be permitted to use the SUA.

C. Where the household shares a residence and utility costs with other individuals, the SUA shall be divided equally among the parties which contribute to meeting the utility costs. In such cases, the household shall only be permitted to use its prorated share of the standard allowance.

**AUTHORITY NOTE:** Promulgated in accordance with F.R. 47:51551 et seq., 7 CFR 272 and 273.9, P.L. 104-193.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:64 (February 1983), amended by the Department of Social Services, Office of

Family Support, LR 20:860 (August 1994), LR 20:991 (September 1994), LR 20:1363 (December 1994), LR 21:188 (February 1995), LR 23:82 (January 1997), LR 24:108 (January 1998).

**§1966. Basic Utility Allowance (BUA)**

Households which do not incur heating or cooling costs separate and apart from their rent or mortgage use a mandatory single Basic Utility Allowance (BUA). To be eligible, a household must be billed on a regular basis for utility costs. Any household living in a housing unit which has central utility meters and which charges the household for excess utility costs only shall use the BUA. When the household shares a residence and utility costs with other individuals, the BUA shall be divided equally among the parties which contribute to meeting the utility costs. In such cases, the household should only be permitted to use its prorated share of the BUA.

**AUTHORITY NOTE:** Promulgated in accordance with P.L. 104-193.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998).

**§1967. Setting the Standard Utility Allowance and Basic Utility Allowance**

[Editor's Note: section heading changed.]

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with 7 CFR 273.9(d)(6), P.L. 104-193.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:864 (September 1985), repromulgated by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998).

**Subchapter M. Notice of Adverse Action (NOAA)**

**§1999. Reduction or Termination of Benefits**

\* \* \*

B. A Notice of Adverse Action (NOAA) will be sent instead of a Notice of Expiration of the certification period when the agency becomes aware of a change in the household's circumstances and the household has not furnished verification of the change, requested more time to obtain the information, or requested the agency's assistance in obtaining the required verification. The NOAA will advise the household of the specific information which must be provided by the last day of the month following the month the notice is sent so that the agency can determine the effect of the change in the household's eligibility and benefit level. If the household provides the information before the adverse action period expires and continues to be eligible, its participation will continue without reapplication. If the verification is not provided in this period of time, benefits will be terminated and the household will be required to reapply. The time frames involved will be the same as if the certification period is shortened.

**AUTHORITY NOTE:** Promulgated in accordance with F.R. 47:55903 et seq., 7 CFR 273.13, 7 CFR 273.12(f)(3).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:324 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998).

Madlyn B. Bagneris  
Secretary

9801#057



## RULE

### Department of Social Services Office of the Secretary Bureau of Licensing

Adult Day Care Center  
(LAC 48:I.Chapter 43)

The Department of Social Services, Office of the Secretary, Bureau of Licensing is amending the *Louisiana Administrative Code*, Title 48, Part 1, Subpart 3, Licensing and Certification.

This rule is mandated by R.S. 46:1971-1980.

These standards are being revised to supersede any previous regulations heretofore published.

#### Title 48

#### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

#### Subpart 3. Licensing and Certification

#### Chapter 43. Adult Day Care Center

#### §4301. Purpose

The overall purpose of these regulations is the well-being of persons involved in adult day care programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:109 (January 1998).

#### §4303. Authority

A. Legal Authority. The legal authority of these regulations and of the licensing authority of the Department of Social Services (DSS) is found in the following statutes:

R.S. 46:51;

R.S. Title 28 Sections 1 through 2;

R.S. Title 28 Sections 421 through 427;

R.S. Title 46 Sections 1971 through 1980;

R.S. Title 46 Section 2102; and

29 U.S.C. 795K (34 CFR Part 363) (P.L. 99-506).

B. Effective Date. These regulations (LAC 48:I.Chapter 43) are effective upon publication as a final rule in the *Louisiana Register*, in accordance with the Administrative Procedure Act.

#### C. Penalties

1. All adult day care facilities, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency shall be licensed.

2. Any person operating an adult day care facility, as defined in R.S. 46:1972, in violation of Chapter 43, shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500 for each such offense. Each day of operation in violation of Chapter 43 shall constitute a separate offense.

#### D. Inspections

1. According to law, it shall be the duty of the Department of Social Services "through its duly authorized agents, to inspect at regular intervals not to exceed one year,

or as deemed necessary by the department, and without previous notice all adult day care facilities subject to the provisions of the Chapter" (R.S. 46:1971-1980).

2. Whenever the department is advised, or has reason to believe, that any person, agency, or organization is operating an adult day care facility without a license or provisional license, the department shall make an investigation to ascertain the facts.

3. Whenever the department is advised, or has reason to believe, that any person, agency, or organization is operating in violation of the Adult Day Care Minimum Standards, the department shall complete a complaint investigation. All reports of mistreatment of clients coming to the attention of the Department of Social Services will be investigated.

#### E. Waivers

1. The secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard if it is determined that the economic impact is sufficiently great to make compliance impractical, as long as the health and well-being of the clients/staff are not imperiled. If it is determined that the facility or agency is meeting or exceeding the intent of a standard or regulation, the standard or regulation may be deemed to be met.

2. All waivers must be reviewed at least annually for continuance. However, a waiver may be withdrawn when it is determined that it was issued in error; situations have changed as to why the waiver was first issued; or when the provider has not complied with agreed-upon stipulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:109 (January 1998).

#### §4305. Types of Programs (Modules) Licensed

#### A. Sheltered Workshop

1. This is a facility-based program providing prevocational and vocational training to functionally-impaired adults that is comprehensive in nature, and offers opportunity for structured work among a variety of other services.

2. This module shall meet standards listed in §§4301-4329.

#### B. Enclave Module

1. *Enclave Module*—a work group of functionally-impaired individuals performing real work in a business or industrial setting among typical co-workers with supervision, training, and support provided both by the host company and the provider. Payment for work performed is made in compliance with Department of Labor regulations. Opportunities for integration with typical co-workers are facilitated through use of common dining facilities, break areas, and other settings/events that may be appropriate.

2. A provider with the enclave module must meet the applicable requirements/standards (except for the physical plant standards).

3. This module must meet standards listed in §§4301-4323.

C. Mobile Work Crew Module

1. Mobile work crew module is:
  - a. designed to provide employment through contracts in the community;
  - b. typically comprised of eight or fewer individuals with a staff person;
  - c. operated at a customer's site, rather than at the provider's building, performing service jobs in the community;
  - d. typically contracted to provide grounds-keeping and janitorial services; and
  - e. useful in providing meaningful wages and constant opportunities for crew members to interact with nonhandicapped people in the community.

2. A provider with the mobile work crew module must meet the applicable requirements (except for the physical plant standards).

3. This module must meet standards listed in §§4301-4323.

D. Psychosocial Module

1. This module is concerned with individuals who need emphasis on social and enhancement skills. Staff is involved in a highly interactive manner with clients in the day program in an effort to build friendship and other skills in the clients.

2. This module must meet standards listed in §§4301-4323. If services are provided within the facility, all standards shall be met.

E. Supported Competitive Jobs Module

1. Supported competitive jobs module requires staff to locate jobs in the community, match individuals to those jobs and provide ongoing support. Wages are commensurate to the work performed, and workers are highly integrated with nonhandicapped workers.

2. A provider with the supported competitive jobs module must meet the applicable requirements (except for the physical plant standards).

3. This module must meet standards listed in §§4301-4323.

F. Community Rehabilitation Program Module

1. *Community Rehabilitation Program (CRP)*—a program that provides vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement.

2. A Community Rehabilitation Program may also provide services compatible with any or all of the modules listed under §4305.

3. A CRP must meet standards listed in §§4301-4323. If the services are provided within the facility, all standards shall be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:109 (January 1998).

§4307. Definitions

*Administrator*—the owner or the manager designated by the governing body as responsible for the management, administration, and supervision of the program.

*Adult Day Care*—a group program designed to meet the individual needs of functionally-impaired adults that is structured and comprehensive and provides a variety of health, social, vocational, or related services in a protective setting for a portion of a 24-hour day.

*Adult Day Care Center*—any place owned or operated for profit, or not for profit, by a person, society, agency, corporation, institution, or any other group wherein are received, for a portion of a 24-hour day, 10 or more functionally-impaired adults who are not related to the owner or operator of the facility for the purpose of supervision or participation in a training program. If the facility receives state or federal funding, directly or indirectly, it must be licensed regardless of the number of adults in its care.

*Change of Ownership*—transfer of ownership to someone other than the owner listed on the initial application. Ownership of the business, not the building, determines the owner.

*Department (DSS)*—the Department of Social Services.

*Director*—the full-time staff responsible for the day-to-day operation of the facility or program as recorded with the Bureau of Licensing. For the purpose of these regulations, the term *director* also refers to director designee, if applicable.

*Director Designee*—the on-site staff appointed by the director when the director is not a full-time employee of the licensed location. This staff shall meet director qualifications.

*Documentation*—written evidence or proof, signed and dated.

*Facility*—adult day care center(s).

*Functionally-Impaired Adult*—a person 17 years of age or older who is physically, mentally, or socially impaired to a degree requiring supervision.

*Human Services Field*—means psychology, sociology, special education, rehabilitation counseling, juvenile justice, corrections, nursing, etc.

*Owner or Operator*—the actual owner of a facility, i.e., the person who owns or controls a facility either directly or indirectly.

*Physically, Mentally or Socially Impaired*—any impairment, physical or mental, that limits one or more of the following major life activities:

1. self-care;
2. receptive or expressive language;
3. learning;
4. mobility;
5. self-direction;
6. capacity for independence;
7. economic self-sufficiency.

*Provider*—the owner of an adult day care facility and the representatives, agents, and employees of the facility. If the owner is a closely held corporation or a nonprofit organization, provider includes the natural persons with actual

ownership or control over the corporation and the corporation's officers, directors, and shareholders.

*Universal Precautions*—the infectious disease control precautions recommended by the Centers for Disease Control to be used in all situations to prevent transmission of blood-borne pathogens (e.g., human immunodeficiency virus, hepatitis B virus).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1971-1980.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:110 (January 1998).

### **§4309. Procedures**

A. Initial Application. Facilities applying for a license after the effective date of these standards shall meet all of the requirements herein. Before beginning operation, it is mandatory to obtain a license from the Department of Social Services.

1. Prior to purchasing, leasing, etc., carefully check all local zoning and building ordinances in the area of the planned facility location. Guidelines from the Office of Public Health, Sanitarian Services; Office of the State Fire Marshal and Office of the City Fire Department (if applicable) should be obtained.

2. After securing property, obtain an application form issued by the Department of Social Services, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821-3078; Telephone: (504) 922-0015 and by FAX (504) 922-0014.

3. The completed application shall indicate the type of adult day care module(s) that will be provided. An initial application fee shall accompany all applications.

4. Nonprofit providers shall submit documentation of nonprofit status with the completed application and initial fee.

5. After the facility's location has been established, complete and return the application form. The applicant must contact the following offices prior to building or renovating a facility:

- a. Office of Public Health, Sanitarian Services (if applicable);
- b. Office of the State Fire Marshal (if applicable);
- c. Office of the City Fire Department (if applicable);
- d. Zoning Department (if applicable);
- e. City or Parish Building Permit Office.

6. After the application has been received by the department, a request will be made to the Office of the State Fire Marshal, Office of the City Fire Department, Office of Public Health, and any known required local agencies, as applicable, to make an inspection of the location, as per their standards. It is the applicant's responsibility to obtain these inspections and approvals. A licensing specialist will visit the facility to conduct a licensing inspection.

7. A license will be issued on an initial application when the following items have been met and verification is received by the Bureau of Licensing:

- a. fire approval (state and/or city) (if applicable);
- b. health approval (if applicable);
- c. zoning (if applicable);
- d. full licensure fee where applicable;

- e. licensure survey verifying substantial compliance;
- f. director meets qualifications.

8. When a provider changes location, it is considered a new operation, and a new application and fee for licensure shall be submitted. All applicable items in §4309.A.7 shall be resubmitted, except director qualifications if director remains the same.

9. When a provider changes ownership, a new application and fee for licensure shall be submitted. All applicable items in §4309.A.7 shall be current. Documentation is required from the previous owner assuring change of ownership, e.g., letter from previous owner, copy of bill of sale, or a lease agreement.

10. All new construction or renovation of a facility requires approval from agencies listed in §4309.A.5, if applicable.

11. The department is authorized to determine the period during which the license shall be effective. A license is valid for the period for which it is issued.

12. A license is not transferable to another person or location.

13. Separate licenses shall be required for facilities maintained on separate premises even though operated under the same management or owner. Separate licenses will not be required for separate buildings on the same grounds.

14. If an owner/director or member of his immediate family has had a previous license revoked, refused, or denied, upon re-application, applicant shall provide written evidence that the reason for such revocation, refusal, or denial no longer exists. A licensing survey will then be conducted to verify that the reasons for revocation, refusal, or denial have been corrected, and the facility is in substantial compliance with all minimum standards.

### B. Fees

1. Initial application fee of \$25 shall be submitted with all initial applications. This fee will be applied toward the total licensure fee, where applicable, when the provider is licensed. This fee shall be paid by all initial providers. All fees shall be paid by certified check or money order only and are nonrefundable.

2. Annual licensure fee of \$150 shall be submitted prior to issuance or renewal of the license, where applicable.

3. Licensure fee shall be waived for nonprofit providers.

4. Other licensure fees:

a. \$25 replacement fee for any provider replacing a license when changes are requested by the provider, e.g., change in capacity, name change, age range change. (No processing charge when request coincides with regular renewal of license.)

b. \$5 processing fee for issuing a duplicate provider license with no changes.

### C. Relicensing

1. An application form shall be resubmitted annually to the Department of Social Services, Bureau of Licensing, Box 3078, Baton Rouge, LA, 70821-3078.

2. A provider changing ownership, or making any substantial changes in the services offered or in the buildings, shall reapply for a license. In the event of a change of ownership, the old license shall be immediately returned to the

Department of Social Services, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821-3078.

3. The Department of Social Services shall be notified prior to making changes which might have an effect upon the license (e.g., changes in program, services, physical plant of the facility, director, hours/months/days of operation, ownership, location).

4. A license is issued for a period of up to one year, based upon provider's compliance with minimum standards. Before expiration of the license, applicable re-inspections by the Office of Public Health, Sanitarian Services; Office of State Fire Marshal; Office of the City Fire Department (if applicable) and Department of Social Services shall be required.

5. Licensing inspections are conducted at least annually and more often if deemed necessary by the department. No advance notice is given. Licensing specialists shall be given access to all of the areas in the facility, staff members, clients, and all relevant files and records. Licensing specialists will explain the licensing process in an initial interview and will report orally, and in writing, (the exit interview) to the director or designee on any deficiencies found during the inspection.

6. If the licensing inspection reveals that the provider is not substantially meeting minimum requirements, a recommendation will be made that a new license not be issued.

D. Denial, Revocation, or Nonrenewal of License. An application for a license may be denied, or a license may be revoked, or renewal thereof denied, for any of the following reasons:

1. violation of any provision of R.S. 46:1971 through R.S. 46:1980, or failure to meet any of the minimum standards, rules, regulations, or orders of the Department of Social Services promulgated thereunder;

2. cruelty or indifference to the welfare of the clients;

3. conviction of a felony, as shown by a certified copy of the record of the court of conviction, of the applicant or the members or the officers of the firm or corporation or the person designated to manage or supervise the facility;

4. the director is not reputable;

5. history of noncompliance;

6. failure of the provider to hire a qualified director;

7. disapproval from any agency whose approval is required for licensure;

8. nonpayment of licensure fee/failure to submit application for renewal prior to the expiration of the current license;

9. any validated instance of corporal punishment, physical punishment, cruel, severe, or unusual punishment, physical or sexual abuse/neglect if the owner is responsible or if the employee who is responsible remains in the employment of the provider;

10. closure of the provider with no plans for reopening and no means of verifying compliance;

11. any act of fraud such as falsifying or altering documents required for licensure.

E. Appeal Procedure. If the license is refused, revoked, or denied because the provider does not meet minimum requirements for licensure, the procedure is as follows:

1. the Department of Social Services, by certified letter, shall advise the provider of the reasons for refusal, revocation, or denial and its right of appeal;

2. the director/owner may appeal this decision by submitting a written request, with the reasons, to the secretary of the Department of Social Services. Write to Department of Social Services, Appeals Section, Box 2944, Baton Rouge, LA 70821-9118. This written request must be post marked within 30 days of the director/owner's receipt of the above notification in §4309.E.1;

3. the Appeals Bureau of the Department of Social Services shall set a hearing to be held within 30 days after receipt of such a request;

4. an appeal hearing officer of the Department of Social Services shall conduct the hearing. Within 90 days after the date the appeal is filed, the Department of Social Services shall advise the appellant, by certified letter, of the decision, either affirming or reversing the original decision. If the license is refused or revoked, the provider shall terminate operation immediately;

5. if the provider continues to operate without a license, the Department of Social Services may seek injunctive relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971 through 1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:111 (January 1998).

#### **§4311. General Requirements**

A. Licensing Authority. The provider shall allow representatives of the licensing agency and the appropriate program office(s), in the performance of their mandated duties, to inspect all aspects of a program's functioning which impact on clients and to interview staff members and clients.

1. The provider shall make any information required in these standards and any information reasonably related to assessment of compliance with these requirements available to the licensing agency and the appropriate program office(s).

i. The client's rights shall not be considered abridged by this requirement.

ii. A provider shall promptly provide all necessary and needed information for review.

iii. A provider shall provide adequate space and privacy for the licensing specialist to review records uninterrupted.

2. The administrator, or a person authorized to act on behalf of the administrator, shall be accessible to agency staff and designated representatives of the licensing agency at all times.

B. Jurisdictional Approvals. The provider shall comply and show proof of compliance with all relevant standards, regulations, and requirements established by federal, state, local, and municipal regulatory bodies, including but not limited to:

1. the Office of Public Health;
2. the Office of the State Fire Marshal and Office of the City Fire Department (if applicable);
3. the Department of Labor (if applicable);
4. fiscal and program review agencies (if applicable);
5. zoning approval (if applicable).

C. Documentation of Authority to Operate. A private provider shall be incorporated in the state of Louisiana.

1. A privately-owned provider shall have documents identifying the names and addresses of owners.

2. A corporation, partnership, or association shall identify the names and addresses of its members and officers and shall, where applicable, have a charter, partnership agreement, constitution, articles of association/incorporation, or bylaws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:112 (January 1998).

### §4313. Administration and Organization

A. Governing Body. The provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the provider.

1. The provider shall have documents identifying all members and officers of the governing body, their addresses, and their terms of membership, if applicable.

2. When the governing body of the provider is composed of more than one person, the governing body shall hold formal meetings at least twice a year.

3. When the governing body is composed of more than one person, the provider shall have written minutes of all formal meetings of the governing body and bylaws specifying frequency of meetings and quorum requirements.

4. The bylaws or other written policy shall describe the circumstances under which a business relationship may exist between a member of the governing body and the provider, so as not to create a conflict of interest.

B. Responsibilities of a Governing Body. The governing body shall:

1. ensure the provider's compliance and conformity with the governing body's charter;

2. ensure the provider's continual compliance and conformity with all relevant federal and state laws and regulations;

3. review and approve the provider's annual budget;

4. ensure that the provider is housed, maintained, staffed, and equipped appropriately, considering the nature of the provider's program;

5. designate a person to act as administrator and delegate sufficient authority to this person to manage the provider;

6. formulate and annually review, in consultation with the administrator, written policies concerning the provider's philosophy, goals, current services, personnel practices, and fiscal management;

7. annually evaluate the administrator's performance;

8. have the authority to dismiss the administrator;

9. meet with designated representatives of the licensing agency and the program office(s) whenever required to do so;

10. inform the licensing agency and the program office(s), in writing, prior to initiating any substantial changes in the program, services, or physical plant of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:113 (January 1998).

### §4315. Management Responsibilities

A. Administrative File. A provider shall have an administrative file including:

1. documents identifying the governing body;

2. list of members and officers of the governing body and their addresses and terms of membership, if applicable;

3. bylaws of the governing body and minutes of formal meetings, if applicable;

4. documentation of the provider's incorporation in the state;

5. organizational chart of the provider;

6. all leases, contracts, and purchase-of-service agreements to which the provider is a party;

7. insurance policies (The provider shall maintain in force at all times a comprehensive general liability insurance policy. The policy shall be in addition to any professional liability policies maintained by the provider. The provider shall extend coverage to any staff member who provides transportation for any client in the course and scope of his/her employment);

8. annual budgets;

9. incident reports and required documentation.

B. Program Description

1. The provider shall have a written program plan describing the services and programs offered by the provider.

2. The provider shall have a written policy regarding participation of clients in activities related to fundraising, publicity, photographing and audio, or audio-visual recordings of clients.

a. The written, informed consent of the client and, where appropriate, the legally responsible person, shall be obtained prior to participation in such activities.

b. Client involvement in these activities shall be in a manner which respects the dignity and confidentiality of the client.

3. The provider shall have written policies regarding the participation of clients in research projects. No client shall participate in any research project without the written, informed consent of the client and the client's legally responsible person, if applicable.

a. The provider shall have a detailed written description of any research projects approved.

b. The provider may conduct research for educational purposes as long as client names are not used or identified in any manner.

C. Client Rights. The provider shall have a written policy on client rights. This policy shall give assurances that:

1. a client's civil rights are not abridged or abrogated solely as a result of placement in the provider's program;
2. a client's civil rights are protected through accessibility or referral to legal counsel;
3. a client is not denied admission, segregated into programs, or otherwise subjected to discrimination on the basis of race, color, religion, sex, age, national origin, handicap, political beliefs, or any nonmerit factor, in accordance with all state and federal regulations.

#### D. Confidentiality and Security of Files

1. The provider shall have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released. The provider, as custodian, shall secure records against loss, tampering, or unauthorized use.

2. The provider shall maintain the confidentiality of all clients' case records. Employees, volunteers, and interns of the provider shall not disclose, or knowingly permit the disclosure of, any information concerning the client or his/her family, directly or indirectly, to any unauthorized person.

3. The provider shall implement and have written policies and procedures regarding the release of information. The client's file shall contain documentation concerning any information released with the individual's written consent. The policies and procedures shall require that the release form shall:

- a. specify the name of the person or agency to whom the information is released;
- b. describe the information to be released;
- c. specify the purpose for the release of information;
- d. specify the length of time for which the release is valid, not to exceed one year; and
- e. include the date and signature of the client or his/her legally responsible person, if applicable. The signature of two witnesses must be obtained when client signs with a mark.

4. The provider shall have a written policy which defines who has access to client records.

5. The provider's written policies shall ensure that information from the case record is made available to the client, the legally responsible person, or legal counsel of the client upon request. If, in the professional judgment of the provider, it is felt that the information contained in the record would be damaging to a client, that information *only* may be withheld from the client, except under court order.

#### E. Record Keeping

1. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of according to state laws.

2. The provider shall ensure that all entries in records are legible, signed by the person making the entry, and accompanied by the date on which the entry was made.

3. The provider shall have sufficient space, facilities, and supplies for providing effective record keeping services.

F. Client's Case Record. A provider shall have a written record for each client which shall include:

1. the name, sex, race, birth date, and current address of the client;

2. date of admission to the program;
3. court status or legal status, and who is authorized to give consent;
4. client's history, including family data, employment record, and prior medical history;
5. current medication and any known allergies;
6. a copy of the client's individual service plan, any subsequent modifications, and any objectives to guide and assist direct service workers in implementing the client's program;
7. quarterly reviews and progress notes;
8. a copy of the discharge summary, when applicable;
9. critical incident reports;
10. reports of any client grievances and the conclusions or dispositions of these reports;
11. the name, address, and telephone number of the next of kin and/or legally responsible person;
12. a signed consent giving the provider authorization to obtain emergency medical care;
13. the name, address, and phone number of the client's physician and dentist;
14. client's evaluations as required in §4319.B.2.

#### G. Personnel File

1. The provider shall have a record for each staff member which shall contain:

- a. the application for employment or résumé;
- b. documentation of three reference checks;
- c. evidence of applicable professional credentials;
- d. in-service training records or summary;
- e. annual performance evaluations;
- f. personnel actions, reports, and notes relating to the individual's employment with the facility;
- g. employee's starting and termination dates;
- h. a satisfactory criminal history check, in accordance with state law;
- i. TB test result; and
- j. documentation of current driver's license for all staff who transport clients.

2. The provider shall have written policies ensuring that staff members have reasonable access to their file and are allowed to add any written statement they wish to the file.

3. The provider shall retain the personnel file of an employee for at least three years after the employee's termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:113 (January 1998).

### §4317. Human Resources

A. Staff Plan/Personnel Practices. The provider shall have written personnel policies that include:

1. a plan for recruitment, screening, orientation, ongoing training, development, supervision, and performance evaluation of staff members;
  - a. the provider shall have a nondiscrimination policy prohibiting discrimination against any person on the basis of

race, color, religion, sex, age, national origin, disability, veteran status, or any nonmerit factor;

b. the provider's screening procedures shall address the prospective staff member's qualifications, ability, and experience, as related to the appropriate job description;

c. prior to employing any person, the provider shall obtain written references or document phone contacts on oral references from three persons;

d. a satisfactory criminal history check shall be obtained by the provider, prior to an offer of employment, in accordance with state law;

e. all persons, prior to or at time of employment, shall be free of tuberculosis in a communicable state, as evidenced by:

i. a negative Mantoux skin test for tuberculosis;

ii. a normal chest x-ray if the aforementioned skin test is positive; or

iii. a statement from a physician certifying that the individual is noninfectious if the chest x-ray is other than normal;

(a). any employee who has a negative Mantoux skin test for tuberculosis, in order to remain employed, shall be retested annually;

(b). any employee who has a positive Mantoux skin test for tuberculosis, in order to remain employed, shall complete an adequate course of therapy, as prescribed by a licensed physician, or shall present a signed statement from a licensed physician stating that therapy is not indicated;

f. where certification or licensing standards exist for professional staff, these individuals shall possess current certifications/licenses. Documentation of such shall be on file and available for review;

g. the provider shall not knowingly hire, or continue to employ, any person whose history or current behavior impairs his/her ability to properly protect the health and safety of the clients or is such that it would endanger the physical or psychological well-being of the clients. This requirement is not to be interpreted to exclude continued employment in other than direct service capacities of persons undergoing temporary medical or emotional problems;

h. the provider shall complete an annual performance evaluation of all staff members. For any person who interacts with clients, a provider's performance evaluation procedures shall address the quality and nature of a staff member's relationships with clients;

2. written job descriptions for each staff position;

3. written employee grievance procedure.

#### B. Orientation

1. A provider's orientation program shall include training in the following topics for *all* employees:

a. philosophy, organization, program, practices, and goals of the provider;

b. instruction in the specific responsibilities of the employee's job;

c. the provider's emergency and safety procedures, including medical emergencies;

d. detecting and reporting suspected abuse and neglect;

e. reporting critical incidents;

f. client rights; and

g. universal precautions.

2. Orientation for direct-care staff shall include additional training in the following topics:

a. implementation of service plans;

b. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

c. basic skills required to meet the health needs and problems of the clients;

d. passive physical restraint;

e. crisis de-escalation and the management of aggressive behavior, including acceptable and prohibited responses; and

f. safe administration and handling of all medications.

3. All direct care employees shall receive certification in adult CPR and first aid within the first 30 days of employment.

4. A new direct care employee shall not be given sole responsibility for the implementation of a client's program plan until all required training is completed.

5. The employee shall sign a statement of understanding certifying that such training has occurred.

#### C. Annual Training

1. A provider shall document that *all* employees receive training on an annual basis in the following topics:

a. provider's policies and procedures;

b. emergency and safety procedures;

c. medical emergencies;

d. client's rights;

e. detecting and reporting suspected abuse and neglect;

f. reporting critical incidents;

g. universal precautions.

2. Direct care staff shall receive additional annual training in the following topics:

a. training in implementation of service plans;

b. confidentiality;

c. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

d. basic skills required to meet the health needs and problems of the client;

e. passive physical restraint;

f. crisis de-escalation; and

g. the management of aggressive behavior, including acceptable and prohibited responses.

3. All direct care staff shall have documentation of current certification in first aid and CPR.

4. Staff in supervisory positions shall have annual training in supervisory and management techniques.

#### D. Number and Qualifications of Staff

1. The provider shall delegate sufficient authority to qualified staff to ensure that the responsibilities the provider undertakes are carried out.

2. The provider shall not be dependent upon clients or volunteers for performing necessary services such as maintenance or client supervision.

3. Qualified direct care staff shall be employed and present with the clients as necessary to ensure the health,

safety and well-being of clients. Staff coverage shall be maintained in consideration of the time of day, the size and nature of the agency, and the ages and needs of the clients.

4. The client/staff ratio shall be one staff per eight clients unless client(s)' functional impairment require(s) additional staff coverage to meet the client(s)' needs.

5. The following staff positions are required; however, one person may occupy more than one position:

a. Director/Director Designee. The director (or director designee, if applicable) shall have a bachelor's degree plus one year's experience relative to the population being served.

b. Qualified Professional. A person with a bachelor's degree in the human services field and one year's experience in human services with the relevant type of client population.

c. Food Service Supervisor. The facility shall designate one staff member who shall be responsible for meal preparation/serving if meals are prepared in the facility.

d. Any staff hired after the effective date of publication shall meet requirements of that position.

#### E. Volunteers/Student Interns

1. A provider utilizing volunteers or student interns on a regular basis shall have a written plan for using such resources. This plan shall be given to all volunteers and interns. The plan shall indicate that all volunteers and interns shall:

a. be directly supervised by a paid staff member;  
b. be oriented and trained in the philosophy and policy and procedures of the provider, confidentiality, the needs of clients, and methods of meeting those needs; and  
c. have documentation of three reference checks.

2. Volunteers/student interns shall be a supplement to the required staffing component.

#### F. External Professional Services

1. When a client's plan indicates the need for professional services that are not available from the provider, the provider shall facilitate access to such services and shall document such.

2. The provider shall have a written agreement with appropriately qualified professionals.

3. Current documentation of the professional's certification/licensure shall be kept on file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:114 (January 1998).

### **§4319. Direct Service Management**

#### A. Admissions

1. The provider shall have a written description of the admission process and the criteria for admission.

2. The provider shall not refuse admission to any client on the grounds of race, color, religion, sex, age, national origin, handicap, political beliefs, or any other nonmerit factor. The provider shall not refuse admission on the grounds of age, except where funded by state or federal monies and the appropriate program office's eligibility criteria indicate age restrictions.

3. The provider shall not admit more clients into care than the number specified on the license.

4. The provider shall not admit any client into care whose presence would pose a documented health and safety risk to the client or to other clients and for whom the provider cannot provide the necessary care.

5. The provider shall determine the legal status of applicants, as well as any changes in such status of applicants or current clients (e.g., full interdiction, partial interdiction, continuing tutorship, competent major).

In the event that a restrictive legal action has been filed on behalf of an applicant or current client, the responsible individual shall be informed of the need to provide a copy of the legal document, or affidavit to that effect, to the provider.

6. There shall be a written orientation program for clients admitted to the program which shall include the following:

a. the responsibilities of the organization;  
b. wage payment practices;  
c. work program rules;  
d. nondiscrimination provisions;  
e. client rights and responsibilities;  
f. grievance and appeal procedures for clients; and  
g. the availability of community-based job training and placement services;

h. The client and staff shall sign and date a statement verifying the client received an explanation of information covered in §4319.A.6.a-g.

#### B. Individual Service Plans

1. Within 30 days of admission, an individualized plan shall be developed by a team composed of the following:

a. the client, and when appropriate, legally responsible person(s);  
b. any representative the client may select, if the representative agrees;  
c. a qualified professional;  
d. the staff person(s) involved in the client's program;  
e. other professionals deemed appropriate by the team.

2. Prior to the development of the initial individualized plan, the following evaluations shall be on file and shall be current (not over a year old):

a. social history;  
b. vocational profile;  
c. psychological or psychiatric;  
d. medical; and  
e. any other evaluations that may be recommended by the team.

NOTE: Omission of a specific evaluation may be made in certain instances, provided the state referring agency documents that the information is not necessary to develop a valid service plan.

3. Individualized plans shall be reviewed and updated at least annually and more often, if needed, by the team as defined in §4319.B.1.a-e.

4. Individualized plans shall include, at a minimum, the following:

a. a list of the client's interests, preferences, and goals;  
b. a list of the client's general and specific abilities, based on observations, interviews and other techniques;



- c. a statement of the client's strengths and needs; and
- d. measurable, functional outcomes based on the results of required evaluations and §4319.B.4.a-c.

5. For each measurable, functional outcome the plan shall include:

- a. methods for achieving the outcome;
- b. persons responsible for implementing the plan;
- c. projected time frames for completion; and
- d. procedures for evaluation of progress.

6. The individualized plan shall be made available to staff person(s) who work with the client.

7. A quarterly summary, approved by a qualified professional, shall include successes and failures of the client's program, and shall address each functional outcome and any recommendations for modification. This shall be located in the client's file.

#### C. Work

1. The provider shall meet all state and federal wage and hour regulations regarding employment of persons admitted to the agency.

a. The provider must maintain full financial records of clients' earnings if the agency pays the client.

b. The provider shall have written assurance that the conditions and compensation of work are in compliance with applicable state and federal wage and hour laws.

2. Clients shall not be required to perform any kind of work involving operation and maintenance of the facility without compensation.

3. Clients shall be directly supervised when operating any type of power driven equipment such as lawn mowers or electric saws, unless the team has determined that direct supervision is not necessary and the equipment has safety guards or devices and adequate training is given to the client and the training is documented.

4. Clients shall be provided with the necessary safety apparel and safety devices.

D. Abuse and Neglect. The provider shall have a comprehensive, written procedure concerning client abuse which includes, but is not limited to, the following:

1. current definitions of abuse and neglect, reporting requirements, and applicable laws;

2. provisions ensuring that regulations for reporting critical incidents involving abuse and neglect are followed;

3. provisions ensuring the administrator/director completes an investigation report within 10 working days;

4. provisions ensuring the client is protected from potential harassment during the investigation;

5. provisions for disciplining staff members who abuse or neglect clients.

#### E. Incident Reports

1. The provider shall have written procedures for the reporting and documentation of deaths of clients, injuries, fights or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, and other situations or circumstances affecting the health, safety, or well-being of a client(s).

Such procedures shall ensure timely verbal reporting to the administrator/director and a preliminary written report within 24 hours of the incident.

There shall be documentation that the director or designee reviewed the written report within 24 hours.

2. When an incident occurs, a detailed report of the incident shall be completed. As a minimum, the incident report shall contain the following:

- a. circumstances under which the incident occurred;
- b. date and time the incident occurred;
- c. location where the incident occurred;
- d. immediate treatment and follow-up care;
- e. names and addresses of witnesses;
- f. date and time the legally responsible person was notified, if applicable;

g. symptoms of pain and injury discussed with the physician, if applicable;

h. signatures and dates of the staff completing the report and the administrator/director.

3. When an incident results in death of a client, involves abuse or neglect of a client, or entails any serious threat to the client's health, safety, or well-being the provider shall:

a. immediately report verbally to the administrator/director and submit a preliminary written report within 24 hours of the incident;

There shall be documentation that the director or designee reviewed the report within 24 hours.

b. immediately notify the Bureau of Licensing and other appropriate authorities, according to state law (e.g., DHH Adult Protection Services, Office of Elderly Affairs, and law enforcement authority). The provider must notify the above agencies, in writing, within 24 hours of the suspected incident;

c. immediately notify the next of kin or legally responsible person, with written notification to follow within 24 hours;

d. provide follow-up written reports to all the above persons and agencies;

e. take appropriate corrective action to prevent future incidents.

4. Copies of all critical incident reports shall be kept as part of the clients' record, and a separate copy shall be kept in the administrative file of the provider, along with documentation of compliance with procedures required in §4319.E.3.

#### F. Behavior Management

1. The provider shall have written policies and procedures for behavior management which:

a. prohibit corporal punishment; chemical restraints; psychological abuse; verbal abuse; seclusion; forced exercise; mechanical restraints; any procedure which denies food, drink, or use of rest room facilities; and any cruel, severe, unusual, or unnecessary punishment;

b. ensure that nonintrusive, positive approaches to address the meaning/origin of behaviors are used prior to the development of a restrictive plan;

c. define the use of behavior modification programs, define mechanisms which authorize their use, and provide for the monitoring and control of their use;

d. indicate that passive/physical restraint may be used only after other, less restrictive interventions/strategies have failed; shall be implemented only by trained staff; and shall be of short duration;

e. cover any behavioral emergency and provide documentation of the event in incident report format.

2. Any behavior management plan for an individual must be developed or approved by a licensed psychologist or psychiatrist.

#### G. Discharge

1. There shall be a written discharge policy and procedure. This policy shall ensure that emergency discharges initiated by the provider shall occur only when the health and safety of a client or other clients might be endangered by the client's further stay at the facility.

2. A summary shall be written at the time of discharge and shall include:

a. the name and address of the client and, where appropriate, the legally responsible person;

b. dates of admission and discharge;

c. reason for discharge and details of the circumstances leading to the discharge;

d. a summary of accomplishments while at the facility;

e. a summary of services provided during care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:116 (January 1998).

#### §4321. Food and Nutrition

A. If meals are prepared by the facility or contracted from an outside source:

1. menus shall be written in advance and shall provide for a variety of foods;

2. records of menus, as served, shall be filed and maintained for at least 30 days;

3. modified diets shall be prescribed by a physician;

4. if there are modified diets, a registered dietician shall review all the orders for special diets and plan the diets;

5. only food and drink of safe quality shall be purchased, and storage, preparation, and serving techniques shall be provided to ensure nutrients are retained and spoilage is prevented;

6. food preparation areas and utensils shall be kept clean.

B. When meals are not provided by the facility:

1. provisions must be made for obtaining food for clients who do not bring their lunch;

2. there shall be an adequate area for eating.

C. Drinking water shall be readily available. If a drinking fountain is not available, single-use disposable cups shall be used.

D. The dining areas shall be adequately equipped with tables, chairs, eating utensils, and dishes designed to meet the functional needs of all clients.

E. Adequate refrigeration for food shall be maintained, and refrigerators shall be kept at 45°F, or below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:118 (January 1998).

#### §4323. Transportation

A. The provider shall have means of transporting clients in cases of emergency.

B. If transportation is provided, the provider shall ensure that the client is provided with the transportation necessary for implementing the client's service plan.

C. Any vehicle used in transporting clients in care of the provider, whether such vehicle is operated by a staff member or any other person acting on behalf of the provider, shall be properly licensed and inspected, in accordance with state law.

D. The provider shall have documentation of liability insurance coverage for all owned and nonowned vehicles used to transport clients. Employees' personal liability insurance shall not be substituted for required coverage.

E. Any staff member of the provider, or other person acting on behalf of the provider, operating a vehicle for the purpose of transporting clients, shall be properly licensed to operate that class of vehicle, according to state law.

F. The provider shall not allow the number of persons in any vehicle used to transport clients to exceed the number of available seats in the vehicle.

G. All vehicles used for the transportation of clients shall be maintained in a safe condition and be in conformity with all applicable motor vehicle laws. The provider shall document that all vehicles, whether provider or employee owned, have a current license and inspection.

H. The provider shall ascertain the nature of any need or problem of a client which might cause difficulties during transportation. The provider shall communicate such information to the operator of any vehicle transporting clients in care.

I. The following additional arrangements are required for providers serving handicapped, nonambulatory clients:

1. A ramp device to permit entry and exit of a client from the vehicle shall be provided for vehicles, except automobiles, normally used to transport persons with disabilities. A mechanical lift may be utilized, provided that a ramp is also available in case of emergency, unless the mechanical lift has a manual override.

2. In all vehicles, except automobiles, wheelchairs used in transit shall be securely fastened to the vehicle.

3. In all vehicles, except automobiles, the arrangement of the wheelchairs shall not impede access to the exit door of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:118 (January 1998).

**§4325. General Safety Practices**

A. A facility shall not maintain any firearms or chemical weapons at any time.

B. A facility shall ensure that all poisonous, toxic, and flammable materials are safely stored in appropriate containers labeled as to contents. Such materials shall be maintained only as necessary and shall be used in such a manner as to ensure the safety of clients, staff, and visitors.

C. Adequate supervision/training shall be provided where potentially harmful materials, such as cleaning solvents and detergents, are used.

D. A facility shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

E. If the provider holds medication for clients, it shall be locked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:119 (January 1998).

**§4327. Emergency and Safety**

A. A provider shall have a written overall plan of emergency and safety procedures.

1. The plan shall provide for the evacuation of clients to safe or sheltered areas.

2. The plan shall include provisions for training staff and clients in preventing, reporting, and responding to fires and other emergencies.

3. The plan shall provide means for an ongoing safety program, including continuous inspection of the center for possible hazards, continuous monitoring of safety equipment, and investigation of all accidents or emergencies.

4. The plan shall include provisions for training personnel in their emergency duties and in the use of any fire fighting or other emergency equipment in their immediate work areas.

B. The facility shall conduct fire drills once every month, with documentation including:

1. date of drill;
2. time of drill;
3. lapse time of drill;
4. number of staff and clients participating;
5. any problems and corrective actions taken; and
6. signature of person responsible for conducting the drill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of

Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:119 (January 1998).

**§4329. Physical Environment**

A. The building shall be constructed, equipped, and maintained to ensure the safety of all concerned.

The building shall be maintained in good repair and kept free of hazards, such as those created by any damaged or defective parts of the building.

B. The provider shall maintain all areas of the facility that are accessible to clients and ensure that all structures on the grounds of the facility are in good repair and free from any reasonably foreseeable hazard to health or safety.

C. The facility shall be accessible to and functional for those cared for, the staff, and the public. All necessary accommodations shall be made to meet the needs of persons with disabilities.

Training or supports are provided to help clients effectively negotiate their environment.

D. There shall be a minimum of 35 square feet of space per client. Kitchens, bathrooms, halls used as passageways, and other spaces not directly associated with program activities shall not be considered as floor space available for clients.

E. There shall be storage space, as needed by the program, for training and vocational materials, office supplies, etc.

F. Rooms used for client activities shall be well ventilated and lighted.

G. There shall be separate space for storage of clients' personal belongings.

H. Chairs and tables shall be adequate in number to serve the clients.

I. Bathrooms and lavatories shall be accessible, operable, and equipped with soap, paper towels or hand drying machines, and tissue.

J. Individuals shall be provided privacy when using bathroom facilities.

K. Every bathroom door shall be designed to permit opening of the locked door from the outside, in an emergency, and the opening device shall be readily accessible to the staff.

L. Stairways shall be kept free of obstruction, and fire exit doors shall be maintained in working order. All stairways shall be equipped with handrails.

M. There shall be a telephone available and accessible to all clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:119 (January 1998).

Madlyn B. Bagneris  
Secretary

9801#056

**RULE**

**Department of the Treasury  
Board of Trustees of the Louisiana  
State Employees' Retirement System**

Definition of Terminate (LAC 58:I.101)

Pursuant to the authority granted by R.S. 11:515 vesting the Board of Trustees with the responsibility for administration of the Louisiana State Employees' Retirement System ("LASERS") and granting the power to adopt and promulgate rules with respect thereto, the Board of Trustees and the executive director hereby adopts the following rule which adds the definition of "terminate" to the definitions section.

The current definition is too ambiguous and could be interpreted to prevent rehired LASERS retirees from accessing funds from the Deferred Retirement Option Plan ("DROP").

**Title 58**

**RETIREMENT**

**Part I. Louisiana State Employees' Retirement  
System (LASERS)**

**Chapter 1. General Provisions**

**§101. Definitions**

\* \* \*

*Terminate*—to completely cease employment with the state of Louisiana for a period of not less than 30 consecutive days.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:120 (January 1998).

James O. Wood  
Executive Director

9801#035

# Notices of Intent

## NOTICE OF INTENT

**Department of Agriculture and Forestry  
Forestry Commission  
and  
Department of Revenue  
Tax Commission**

1998 Timber Stumpage Values  
(LAC 7:XXXIX.101)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Forestry Commission, and the Department of Revenue and Taxation, Tax Commission propose to amend rules regarding the value of timber stumpage for calendar year 1998. These rules comply with and are enabled by R.S. 3:3101 et seq.

### Title 7

## AGRICULTURE AND ANIMALS

### Part XXXIX. Forestry

#### Chapter 1. Timber Stumpage

#### §101. Stumpage Values

The Louisiana Forestry Commission and the Louisiana Tax Commission, as required by R.S. 47:633, determined the following timber stumpage values, based on current average stumpage market values, to be used for severance tax computations for 1998.

Trees and Timber	Price/Scale	Price/Ton
1. Pine Sawtimber	\$392.40/MBF	\$49.05/ton
2. Hardwood Sawtimber	\$207.96/MBF	\$21.89/ton
3. Pine Chip and Saw	\$89.53/cord	\$33.16/ton
<b>Pulpwood</b>		
5. Pine Pulpwood	\$25.46/cord	\$9.43/ton
6. Hardwood Pulpwood	\$15.79/cord	\$5.54/ton

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

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Forestry, and the Louisiana Forestry Commission, LR 4:9 (January 1978), amended LR 5:7 (January 1979), LR 6:728 (December 1980), LR 7:627 (December 1981), LR 8:651 (December 1982), LR 9:848 (December 1983), LR 10:1038 (December 1984), LR 11:1178 (December 1985), amended by the Department of Agriculture and Forestry, Office of Forestry, and the Louisiana Forestry Commission, LR 12:819 (December 1986), LR 13:432 (August 1987), LR 14:9 (January 1988), LR 15:5 (January 1989), LR 16:16 (January 1990), LR 17:476 (May 1991), LR 18:6

(January 1992), LR 19:611 (May 1993), LR 20:408 (April 1994), LR 21:930 (September 1995), LR 21:1069 (October 1995), amended by the Louisiana Forestry Commission and Louisiana Tax Commission, LR 22:581 (July 1996), LR 23:943 (August 1997), amended by the Department of Agriculture and Forestry, Forestry Commission, and the Department of Revenue, Tax Commission, LR 24:

All interested persons may submit written comments on the proposed rules through February 25, 1998, to Don Feduccia, Department of Agriculture and Forestry, 5825 Florida Boulevard., Baton Rouge, LA 70806. No preamble concerning the proposed rules is available.

Billy Weaver, Chairman  
Forestry Commission

Malcolm Price, Chairman  
Tax Commission

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: 1998 Timber Stumpage Values

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 

There will be no additional costs or savings to state or local governments required by the implementation of this action.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 

The net result of this action adjusts average stumpage values upward for timber harvested. The severance tax revenue received by state and local governments will increase if 1998 timber production levels equal 1996 production. State revenue would increase by \$200,705 and local government revenues would increase by \$602,114 during fiscal year 97-98, and again in the first half of fiscal year 98-99, based on the assumptions used in this analysis.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
 

Although the estimated total tax paid by timber sellers and reported and remitted by wood-using industries will increase as a result of this action, the prevailing severance tax rate for timber harvesting remains constant by statute. No increases in paperwork or procedures will result from this action.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
 

This action is taken on an annual basis and should have negligible effect on competition or employment. The tax revenue increases that may result from the stumpage prices set by this action should have a beneficial effect on parish and state government.

Skip Rhorer  
Assistant Commissioner  
9801#077

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

## NOTICE OF INTENT

### Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Opportunity Program for Students  
(TOPS) (LAC 28:IV.Chapters 1-21)

The Louisiana Student Financial Assistance Commission (LASFAC) advertises its intention to adopt rules for the Tuition Opportunity Program for Students (TOPS). In accordance with R.S. 17:3021-3036, the Louisiana Student Financial Assistance Commission intends to adopt the following rule governing the Scholarship and Grant Programs administered by the commission. The purpose of this proposed rule is to govern the allocation and award of scholarship and grant funds under these programs.

#### Title 28

#### EDUCATION

#### Part IV. Higher Education Scholarship and Grant Programs

##### Chapter 1. Scope

##### §101. Introduction

A. Statutory Authority. The Louisiana Student Financial Assistance Commission (LASFAC) was created by Chapter 20, Higher Education Assistance, Louisiana Revised Statutes of 1950, comprised of R.S. 17:3021-3036, for the purpose of supervising, controlling, directing and administering state and federal programs to provide loans to assist persons in meeting the expenses of higher education, and state and federal scholarship and grant programs for higher education. The Louisiana Office of Student Financial Assistance (LOSFA), under authority of the commission, administers state and federal postsecondary student scholarship, grant and loan programs.

B. Agency's Mission Statement. The mission of LOSFA is to provide resources to Louisiana residents for the pursuit of postsecondary education.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

##### §103. Purpose

A. LAC 28:IV provides the rules and regulations governing participation in the scholarship and grant programs administered by LASFAC, including, but not limited to:

1. applicants and recipients;
  2. high school counselors;
  3. principals and headmasters;
  4. superintendents;
  5. college and university financial aid directors and staff;
- and
6. federal and state authorities.

B. LAC 28:IV was developed to meet the following objectives:

1. establish scholarship and grant policies and procedures that implement and explain or interpret statutes;

2. define the program responsibilities of participants (applicants, recipients, and high school, school board and postsecondary institution officials);

3. ensure that scholarships and grants are awarded in accordance with statute and legislative intent;

4. establish procedures to monitor the performance of scholarship and grant recipients;

5. ensure compliance with statutory and regulatory provisions governing the administered programs.

C. Since these rules and regulations can neither anticipate nor address every situation that might be encountered in the administration of the scholarship and grant programs included herein, participants in doubt about the applicability or interpretation of a rule or regulation in LAC 28:IV are advised to contact LOSFA for guidance.

D. LAC 28:IV shall be amended and updated as necessary. Such updates will be forwarded to institutions in the form of Scholarship and Grant Program Memoranda (SGPM). SGPM will cover additions, deletions, revisions and clarifications to the rules and regulations.

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

HISTORICAL NOTE: Promulgated by the Louisiana Student Financial Assistance Commission, Louisiana Office of Student Financial Assistance LR 24:

##### §105. Effective Date

These rules and regulations are effective for awards beginning with the 1998-99 academic year.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

##### §107. Authority to Audit

By participating in the scholarship and grant programs administered by LASFAC and described in LAC 28:IV, all participants, including high schools and postsecondary institutions, grant LASFAC and the Louisiana legislative auditor the right to inspect records and perform on-site audits of each institution's administration of the programs for the purpose of determining the institution's compliance with state law and LASFAC's rules and regulations.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

##### §109. Discrimination Prohibition

The exclusion of a person from equal opportunity for a Louisiana scholarship and/or grant program administered by LASFAC because of race, religion, sex, handicap, national origin or ancestry is prohibited. No policy or procedure of this agency shall be interpreted as superseding or contradicting this prohibition.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

**§111. Criminal Penalties**

All certifications of student performance which are submitted to LASFAC for the purpose of determining a student's eligibility for an award under a student aid program administered by LASFAC shall be by sworn affidavit of the certifying official and such official shall be subject to criminal law applicable to false swearing.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

**Chapter 3. Definitions**

**§301. Definitions**

Where the masculine is used, in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

*Academic Year (College)*—the two- and four-year college and university academic year begins with the fall term of the award year, includes the winter term, if applicable, and culminates with the completion of the spring term of the award year. The two- and four-year college and university academic year does not include summer sessions or intersessions. The Louisiana Technical College academic year begins with the fall quarter, includes the winter and spring quarters and culminates with the summer quarter.

*Academic Year (High School)*—the annual academic year for high school begins with the summer session, includes the fall and winter terms and ends at the conclusion of the spring term, in that order. For example, for a high school graduate to be considered for award of a scholarship to attend college in the 1998 fall semester, he or she must have graduated by the spring term 1998 (usually May or June), but may have graduated during the summer term 1997 (usually June or July) or midterm 1997 (usually December). This definition is not to be confused with the Louisiana Department of Education's definition of *school year*, which is found in Louisiana Department of Education Bulletin 741.

*Average Public Tuition*—the amount of a TOPS tuition award (Opportunity, Performance and Honors) that will be received by a student attending a private college or university that is a member of the Louisiana Association of Independent Colleges and Universities (LAICU), calculated using the program's prior year average annual tuition amount received by students attending public two- and four-year institutions in the prior award year.

*Basic Course Enrollment Charges*—those institutional tuition and mandatory fees universally charged to all full-time students for purposes of enrollment.

*Core Curriculum*—

a. at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work constituting a core curriculum as follows:

Units	Course
1	English I
1	English II
1	English III

1	English IV
1	Algebra I (No substitutions)
1	Algebra II
1	Geometry, Trigonometry, Calculus or Comparable Advanced Math
1	Biology I
1	Chemistry I
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II or Physics
1	American History
1	World History, World Culture, Western Civilization or World Geography
1	Civics and/or Economics/Free Enterprise
1	Fine Arts Survey; (or substitute two units Performance courses in Music, Dance and/or Theater; or two units of Studio Art; or one elective from among the other subjects listed in this core curriculum)
2	In the Same Foreign Language
½	Computer Science, Computer Literacy or Data Processing (or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum)

b. Core units are waived upon sworn affidavit by the school board superintendent for public schools or by the principal or headmaster for nonpublic high schools that the course was not available to the student at the school attended.

*Cost of Education*—the total amount it will cost a student to go to school, usually expressed as an academic year figure. This cost is determined by the school in compliance with Title IV of the Higher Education Act of 1965, as amended, and is annually updated and adopted by the institution. The cost of education covers tuition and fees, on-campus room and board (or a housing and food allowance for off-campus students) and allowances for books, supplies, transportation, child care, costs related to a disability, and miscellaneous expenses. Also included are reasonable costs for eligible programs of study abroad. An allowance (determined by the school) is included for reasonable costs connected with a student's employment as part of a cooperative education program.

*Dependent Student*—a student who is dependent on his or her parents or legal guardian for support and therefore is required to include parental information on the FAFSA or renewal FAFSA.

*Eligible Noncitizen*—an individual who can provide documentation from the Immigration and Naturalization Service (INS) that he or she is in the U.S. for other than a temporary purpose with the intention of becoming a citizen or permanent resident. Including, but not limited to, refugees, persons granted asylum, Cuban-Haitian entrants, temporary residents under the recent Immigration Reform and Control Act of 1986, and others. A permanent resident of the U.S. must provide documentation from the INS to verify permanent residency.

*Expected Family Contribution (EFC)*—an amount, determined by a formula established by Congress, that

indicates how much of a family's financial resources should be available to help pay for the dependent's cost of education. Factors such as taxable and nontaxable income, assets (such as savings and checking accounts), and benefits (for example, unemployment or Social Security) are all considered in this calculation.

*Fee Schedule*—a listing of the actual tuition and mandatory fees for attendance at a postsecondary school as defined by the institution.

*First-Time Freshman*—a student is a first-time freshman the first fall, winter or spring semester or quarter, subsequent to high school graduation, in which a student enrolls as a full-time student and continues to be enrolled full time on the fourteenth class day (ninth class day for Louisiana Tech). A student who begins postsecondary or university attendance in a summer session will be considered a first-time enrollee for the immediately succeeding fall term.

*Full-Time Student*—

a. a student enrolled in an institution of higher education who is carrying a full-time academic workload as determined by the school under the standards applicable to all students enrolled;

b. for continuation purposes, a student is considered to have met the full-time requirement if by the completion of the spring term he or she has earned at least 24 hours of total credit during the fall, winter and spring terms at an institution defining 12 semester or eight quarter hours as the minimum for full-time undergraduate status.

c. for programs which permit graduate study, a graduate student must have earned at least 18 hours of total credit during the fall, winter and spring terms;

d. a workload of at least 30 clock hours per week is the full-time equivalent at a technical college.

*Graduate (High School)*—for the purposes of this Chapter, a *high school graduate* is defined as a student certified by award of a high school diploma to have satisfactorily completed the required units at a Louisiana public- or BESE-approved nonpublic high school or certified by award of a high school diploma from an eligible non-Louisiana high school.

*Independent Student*—those students required to report only student information on the FAFSA, or if married, student and spouse information, and information on any dependent children. An independent student is a student who meets at least one of the criteria listed in Subparagraphs a.-f or has been determined independent by a financial aid officer exercising professional judgment in accordance with applicable provisions of the Higher Education Act of 1965, as amended:

a. reached 24 years of age prior to January of the year preceding the academic year for which the student is applying for aid;

c. is a veteran of the U.S. Armed Forces, including a student who was activated to serve in Operation Desert Storm;

c. is an orphan or a ward of the court or was a ward of the court until age 18;

d. has legal dependents other than a spouse;

e. is a graduate or professional student;

f. is married.

*Louisiana Resident*—any person who has manifested intent to remain in this state by establishing Louisiana as legal domicile, as demonstrated by compliance with all of the following:

a. has continuously resided in Louisiana during the 24 months preceding college or university enrollment, except for Rockefeller and SSIG recipients who must have continuously resided in Louisiana for the previous 12 months; and

b. unless designated as an independent student, as defined in LAC 28:IV, has a parent or legal guardian who is domiciled in Louisiana; and

c. if registered to vote, is registered to vote in Louisiana; and,

d. if licensed to drive a motor vehicle, is in possession of a Louisiana driver's license; and

e. if owning a motor vehicle located within Louisiana, is in possession of a Louisiana registration for that vehicle; and,

f. if earning an income, has complied with Louisiana state income tax laws and regulations.

*Merit Ranking Formula*—an index incorporating selected merit factors which is used to rank eligible applicants in the priority by which competitive scholarships are to be awarded. As of July 1, 1997, the TOPS Teacher Award and Rockefeller Scholarship are the only programs in which applicants are competitively ranked. The following formulas for the merit ranking of scholarship applicants provide for the equating of scores for high school graduating seniors and college students.

a. Formula I—utilized for applicants with less than 24 hours of graded college credit:

$$\text{Merit Score} = \left( \left( \frac{\text{HSGPA}}{4.00} \right) \times 60 \right) \% \left( \left( \frac{\text{ACT}}{36} \right) \times 40 \right)$$

b. Formula II—utilized for applicants with 24 or more hours of graded college credit:

$$\text{Merit Score} = \left( \left( \text{College} \frac{\text{GPA}}{4.00} \right) \times 95 \right) \% \left( \left( \frac{\text{College Level}}{4} \right) \times 5 \right)$$

c. Formula III—utilized for applicants for the TOPS Teacher Award. For those applicants majoring in math or chemistry, an additional 10 points are added to the merit score determined by Formula I or II, resulting in an adjusted merit score.

d. Applicants' merit scores are ranked in descending order with the applicant with the highest merit score ranked first. The number of applicants selected for award is dependent upon the amount of award funds available.

*Monetary Repayment*—for purposes of the Rockefeller State Wildlife Scholarship and TOPS Teacher Award Programs, repaying the scholarship funding received, plus any interest accrued under the terms of the promissory note signed by the recipient, if the recipient fails to fulfill the terms of the program. See *Repayment*.

*Overaward*—for the purposes of LAC 28:IV, an over award occurs when a student received financial aid in excess of the cost of education as established in accordance with federal Title IV regulations or an award under state programs to which the student was not entitled.

*Refund*—a refund of school charges that the school makes to a student, usually after the student has withdrawn from



school. The refund to the student is the difference between the amount the student paid toward school charges minus the amount the school keeps for the portion of the payment period that the student was enrolled.

*Repayment*—the amount of the cash disbursement that a student must pay back to the school if the student withdraws from the program. If the cash disbursement was greater than the student's living expenses (student's education costs above and beyond the amount of tuition and fees) up to the withdrawal date, the student must repay the excess amount. The actual amount of the refund/repayment is determined according to the school's policy in accordance with federal regulations. See *Monetary Repayment*.

*Substantial Financial Need*—for purposes of the SSIG program only, substantial financial need is the difference between the student's cost of education and the sum of that student's expected family contribution (EFC) plus other student aid the student is due to receive. The difference thus computed must exceed \$199.

*Undergraduate Student*—a student who has not completed the requirements for a baccalaureate degree program and/or is not classified as a professional student for the purposes of receipt of federal student aid.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

## **Chapter 5. Application; Application Deadlines and Proof of Compliance**

### **§501. Application**

All new applicants for, and all continuing recipients of, Louisiana scholarship and grant programs must annually apply for state and federal aid by completing the Free Application for Federal Student Aid (FAFSA) or the renewal FAFSA, whichever is applicable to the individual student. The deadline for priority consideration for state aid is published in the FAFSA's instructions and may be revised annually by the LASFAC.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§503. Application Deadlines**

#### **A. Deadline for Priority Consideration**

1. For priority consideration for the 1998-99 award year, applicants must submit the FAFSA to be received by the federal processor by June 1, 1998.

2. Priority consideration means that an applicant who submits a FAFSA by this date shall, under normal circumstances, receive notification of his eligibility for a noncompetitive award (TOPS Opportunity, Performance and Honors Awards) prior to enrolling in the fall term.

3. An applicant for a competitively awarded scholarship (TOPS Teacher Award and Rockefeller State Wildlife Scholarship) who submits a FAFSA by this date shall be considered for selection of award in the first round of applicants awarded.

4. For priority consideration for award years after 1998-99, applicants must submit the FAFSA to be postmarked by April 15, or to be received by the federal processor by May 1, preceding the award year.

B. Final Deadline. The final deadline to apply for state aid is March 1 of the award year, by which time the FAFSA must have been received by the federal processor. For example, for the 1998-99 award year, the final deadline date for receipt of the application by the federal processor is March 1, 1999.

C. If a prescribed deadline date falls on a weekend or holiday, it will automatically be extended to the next business day.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§505. Proof of Compliance**

As proof of compliance with the state's final deadline for submitting the FAFSA, LASFAC will accept the documentation listed in Paragraph 1. through 3. No other form of verification, including notarized or certified statements, will be accepted as proof of compliance with the deadline requirement.

1. A certificate of mailing, registered, certified, certified/return receipt requested, priority or overnight mail receipt from the United States Postal Service, or other authorized mail carriers such as United Parcel Service and Federal Express, which is dated prior to the state's final deadline.

2. The Electronic Student Aid Report (ESAR), produced by the federal processor, shows that the original application was received by the state's final deadline.

3. The federal processor provides verbal or written verification to LASFAC that the original application was received by the state's final deadline.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§507. Final Deadline for Submitting Documentation of Eligibility**

A. LASFAC will continue to process eligibility for both new and renewal applicants during each award year until May 1 of the spring term of that award year.

B. Students not determined eligible by May 1 of the spring term of the award year are ineligible to receive program funding that award year.

C. All documentation and certifications necessary to establish student eligibility, including but not limited to high school and/or college transcripts and certifications, copies of Student Aid Reports, applicant confirmation forms, promissory notes and other documents which may be utilized in determining eligibility, must be received by LASFAC no later than May 1 of the award year. For example, to receive an award for the 1998-99 award year, LASFAC must have in its possession all documents relevant to establishing eligibility by May 1, 1999.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

## **Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity; Performance and Honors Awards**

### **§701. General Provisions**

A. Legislative Authority. The TOPS Opportunity, Performance and Honors Awards were created by Act 1375 of the 1997 Regular Session of the Louisiana Legislature. This Act amended and reenacted R.S. 17:3026(J) and (K), 3042.36, Chapter 20-G of the Louisiana Revised Statutes of 1950, comprised of R.S. 17:3048.1 and 3048.2, and R.S. 47:1508(B)(18).

B. Description, History and Purpose. The Tuition Opportunity Program for Students (TOPS) is a comprehensive, merit-based student aid program consisting of a series of components, with each component having its own eligibility criteria and titled award. The purpose of TOPS is to provide an incentive for Louisiana residents to academically prepare for and pursue postsecondary education in this state, resulting in an educated work force enabling Louisiana to prosper in the global market of the future. The major components of TOPS are the opportunity award, the performance award and the honors award.

C. The opportunity, performance and honors awards, which will be funded for the 1998-99 academic year, combine former programs (Louisiana Tuition Assistance Plan [TAP] and the Louisiana Honors Scholarship Program) with a new component, the honors award, to produce a comprehensive program of state scholarships.

D. The purposes of this program are to:

1. financially assist those students who are academically prepared to continue their education at a Louisiana postsecondary institution; and
2. encourage academic excellence; and
3. provide incentives for Louisiana high school graduates to pursue postsecondary education in this state.

E. Award Amounts. The specific award amounts for each component of TOPS are as follows.

1. The TOPS Opportunity Award provides undergraduate tuition for full-time attendance at Louisiana public two- and four-year colleges and universities and Louisiana Technical College.

2. The TOPS Performance Award provides a \$400 annual stipend, in addition to tuition.

3. The TOPS Honors Award provides an \$800 annual stipend, in addition to tuition.

4. Performance and Honors Award recipients attending Louisiana Technical College are restricted to the receipt of the amount of tuition charged by the institution and are not eligible for annual stipends.

5. Students attending a regionally accredited independent college or university which is a member of the Louisiana Association of Independent Colleges and Universities (LAICU) receive the average public tuition amount, as defined in §301 plus any applicable stipend.

6. Recipients of TOPS Awards who are also beneficiaries of Student Tuition Assistance and Revenue Trust

(START) Saving Program accounts, may apply the START disbursements to pay tuition, and any remaining tuition due may be paid by the TOPS award. Any balance of the TOPS award which remains after payment of the institution's charges, shall be credited to the student's account and treated in accordance with institutional policies.

7. For the 1998-99 award year only, students funded under the Tuition Assistance Plan (TAP) or the Louisiana Honors Scholarship during the 1997-98 award year, who have maintained eligibility for the 1998-99 award year, shall receive awards under the TOPS Opportunity or Performance Awards, respectively. For 1997 high school graduates receiving a TAP or Louisiana Honors Scholarship award during the 1997-98 award year, who meet the criteria for establishing and maintaining eligibility for a TOPS Performance and/or Honors Award as specified in §§703-705, may at their option elect to be awarded under that program which provides the higher monetary award. Students electing an award with a higher monetary value, will be required to meet continuation requirements for the higher award.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§703. Establishing Eligibility**

To establish eligibility for a TOPS Opportunity, Performance or Honors Award, the student applicant must meet all of the following criteria:

1. be a U.S. citizen or national or eligible noncitizen, and be registered with the Selective Service, if required; and
2. be a resident of Louisiana, as defined in Chapter 3 of LAC 28:IV; and
3. annually submit the completed Free Application for Federal Student Aid (FAFSA) or renewal FAFSA by the applicable state aid deadline defined in §503; and
4. initially apply and enroll in an eligible postsecondary institution within two years of the date of high school graduation and for Opportunity Awards only, enroll as a first-time freshman, as defined in Section §301 in an eligible postsecondary institution within two years of the date of high school graduation.

5. graduate from a BESE-approved, provisionally-approved, or probationally-approved public or nonpublic high school or eligible non-Louisiana high school as defined in §1701; or for Performance Awards only, be enrolled in a state-approved home study program; and

6. at the time of high school graduation, have successfully completed 16.5 units of high school course work constituting a core curriculum as defined in §301. Applicants for the TOPS Performance Award are not required to complete the core curriculum until the graduating class of 2001; and

7. at the time of high school graduation have taken the American College Test (ACT) and received composite test score results, or an equivalent concordant value on the Scholastic Aptitude Test (SAT), of at least:

- a. the state's reported prior year average, rounded, but never less than 19, for the Opportunity Award; or
- b. a 23 for the Performance Award; or

- c. a 27 for the Honors Award; and
- 8. have attained a cumulative high school grade point average, based on a 4.00 maximum scale for all courses reflected on the high school transcript of at least:
  - a. a 2.50 for the Opportunity Award; or
  - b. a 3.50 for either the Performance or Honors Awards; and
- 9. for the Performance Award only, be certified as graduating in the top 5 percent of the high school graduating class, as defined in Chapter 19 of LAC 28:IV or be enrolled in a state-approved home study program and score in the upper 5 percent in the state on the National Merit Examination; and
- 10. be in compliance with the terms of other federal and state aid programs which the applicant may be receiving and which are administered by LASFAC; and
- 11. not have a criminal conviction, except for misdemeanor traffic violations; and
- 12. agree that awards will be used exclusively for educational expenses; and
- 13. enroll as a full-time undergraduate student, as defined in §301, in a LASFAC approved eligible postsecondary institution, as defined in §1901; and
- 14. if academically eligible for more than one of the TOPS components, excluding the TOPS Teacher Award, be awarded under that component which requires the highest academic standards.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

#### **§705. Maintaining Eligibility**

A. To continue receiving the TOPS Opportunity, Performance or Honors Awards, the recipient must meet all of the following criteria:

- 1. have received less than four years or eight semesters of TOPS Award funds; and
- 2. annually submit the Free Application for Federal Student Aid (FAFSA) or renewal FAFSA by the applicable state aid deadline defined in §501; and
- 3. be in compliance with the terms of other federal and state aid programs which the applicant may be receiving and which are administered by LASFAC; and
- 4. not have a criminal conviction, except for misdemeanor traffic violations; and
- 5. agree that awards will be used exclusively for educational expenses; and
- 6. continue to enroll as a full-time undergraduate student in an eligible postsecondary institution, as defined in §705.A.13, unless granted an exception for cause by LASFAC; and
- 7. earn at least 24 college credit hours during the fall and spring semesters or fall, winter and spring quarters, or complete an average of 30 clock hours per week, as evaluated at the conclusion of the spring term. Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility; and

8. not be placed on academic probation by the postsecondary institution attended; and

9. maintain, by the end of each academic year (the conclusion of the spring term), a cumulative college grade point average on a 4.00 maximum scale of at least:

- a. a 2.10 after the completion of less than 48 credit hours, a 2.30 after the completion of 48 credit hours, and a 2.50 after the completion of 72 credit hours, for continuing receipt of an Opportunity Award; or
- b. a 3.00 for continuing receipt of either a Performance or Honors Award.

B. Students failing to meet the requirements listed in §705.A.8 and 9.a and b may have their tuition awards reinstated upon the lifting of academic probation and/or attainment of the required grade point average, if the period of ineligibility did not persist for more than two years from the date of loss of eligibility. Reinstated students are ineligible for receipt of annual stipends.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **Chapter 9. TOPS Teacher Award**

#### **§901. General Provisions**

A. Legislative Authority. The TOPS Teacher Award Program was created by Act 476, of the 1997 Regular Session of the Louisiana Legislature. This bill amended and reenacted R.S. 17:3042.1(A)(3) and (4), (B), (C), and (D) and 3042.2(A) and (B); reenacted R.S. 17:3042.1(A)(5) and (6) and 3042.8; and renamed Chapter 20-B of Title 17 of the Louisiana Revised Statutes of 1950.

B. Description, History and Purpose. The Tuition Opportunity Program for Students (TOPS) Teacher Award:

1. annually provides approximately 90 competitively awarded educational loans to residents of Louisiana who commit to teach at the elementary or secondary school level in Louisiana. When the recipient teaches at an approved school in Louisiana, the loans are forgiven in the ratio of one year of loan forgiveness for each year of teaching, or two years of loan forgiveness for each year of teaching in an elementary or secondary school which is located in an economically disadvantaged region of the state as determined by the Board of Elementary and Secondary Education (BESE);

2. was first funded for the 1997-98 award year;

3. was created to provide an incentive for Louisiana's best and brightest students to become tomorrow's classroom teachers and to provide an incentive that will attract highly qualified teachers in mathematics and chemistry at the elementary and secondary school levels.

C. Award Amounts

1. Loans are made in the amount of \$6,000 per award year for mathematics and chemistry majors.

2. Loans are made in the amount of \$4,000 per year for teacher education majors other than those listed in §901.C.1.

3. Recipient may receive a maximum of four years of funding.

4. Recipients receive one half of the annual award (\$3,000 or \$2,000, respectively) at the beginning of the fall and spring terms.

5. Recipients may, in conjunction with the Teachers Award, receive another TOPS Award.

6. Recipients may not receive aid which, together with the TOPS Teacher Award, would exceed the students' total cost of education as determined by the institution in accordance with regulations implementing federal Title IV student aid.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§903. Establishing Eligibility**

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

1. be a U.S. Citizen or National or eligible non-citizen, and be registered with the Selective Service, if required; and

2. be a resident of Louisiana, as defined in Chapter 3 of LAC 28:IV; and

3. annually submit the completed Free Application for Federal Student Aid (FAFSA) or Renewal FAFSA, whichever is applicable to the student, by the state aid deadline defined in §503; and

4. graduate from a Board of Elementary and Secondary Education (BESE)-approved, provisionally-approved, or probationally-approved public or nonpublic high school; and

5. at the time of high school graduation, have successfully completed 16.5 units of high school course work constituting a core curriculum as defined in Chapter 3 of LAC 28:IV; and

6. at the time of high school graduation, have attained a composite score on the American College Test (ACT) or the Scholastic Aptitude Test (SAT) which is, or is equivalent to, at least a 23 on the 1990 version of the ACT; and

7. graduate with a cumulative high school grade point average of at least a 3.25, calculated on a 4.00 scale, for all courses reflected on the high school transcript; and

8. if by the end of June in the year of application, the student will have completed 24 or more hours of graded college credit, have at least a 3.25 cumulative college grade point average on a 4.00 scale; and

9. complete and submit such documentary evidence as may be required by LASFAC by the deadline specified in §503; and

10. be in compliance with the terms of other federal and state aid programs which the applicant may be receiving and which are administered by LASFAC; and

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

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

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

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§905. Selection Criteria**

Recipients are competitively selected for the award based upon the merit rank score assigned to each eligible applicant. The merit ranking formula is defined in §301.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§907. Maintaining Eligibility**

To continue receiving the TOPS Teacher Award, recipients must meet all of the following criteria:

1. have received less than four years or eight semesters of TOPS Teacher Award funding; and

2. at the close of each academic year (ending with the spring semester or quarter), have earned at least 24 hours total credit during the fall, winter and spring terms; and

3. achieve a cumulative grade point average of at least a 3.00 calculated on a 4.00 scale at the end of each academic year; and

4. not be placed on academic probation as determined by the college or university attended; and

5. continue to enroll each subsequent semester or quarter as a full-time undergraduate student, unless granted an exception for cause, in a degree program or course of study leading to a degree in education or alternative program leading to regular certification as a teacher at the elementary or secondary level; or

6. enter a program approved by the State Board of Elementary and Secondary Education (BESE) which leads to a degree in education or to regular certification as a teacher as soon as sufficient credits have been earned to do so; and

7. annually apply for federal and state student aid by completing the FAFSA or Renewal FAFSA, whichever is applicable to the student, by the state deadline; and

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

9. be in compliance with the terms of all other federal and state aid programs which the student may be receiving and which are administered by LASFAC.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§909. Completion of Promissory Note and Acceptance of Award**

Prior to receiving an award, the recipient must agree to the terms and conditions contained in the TOPS Teacher Award Program Promissory Note by completing the form and returning it to LASFAC by the specified deadline. The promissory note obligates the recipient to teach one year for each year of funding received; or, if teaching in a school located in an *economically disadvantaged region* of the state, as defined by the State Board of Elementary and Secondary Education (BESE), teach one year for every two years of

funding received, or repay the funds received, plus accrued interest and any collection costs incurred.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§911. Discharge of Obligation**

A. The loan obligation may be discharged by teaching fulfillment, monetary repayment or cancellation.

B.1. Teaching fulfillment is accomplished by:

a. within two years of the date of certification as a teacher, perform service as a full-time classroom teacher in a Louisiana Board of Elementary and Secondary Education (BESE)-approved, provisionally-approved, or probationally-approved elementary or secondary school;

b. each one-half year or more of full-time service as a teacher will fulfill an equivalent period of funding (one semester). However, if teaching in an elementary or secondary school which is located in an economically disadvantaged region of the state, as defined by BESE, one-half year of teaching will fulfill one year of funding.

2. The first semester of full-time teaching will be applied toward fulfillment of the earliest dated disbursement not previously paid under §911.C, the second semester the next earliest dated disbursement, and continuing until all disbursements have been fulfilled.

3. Teaching to fulfill requirements must be completed within six years of the date of certification as a teacher.

C. Monetary Repayment. Recipients who elect not to discharge the obligation by teaching fulfillment and who are not eligible for discharge by cancellation must repay the loan principal plus accrued interest and any collection costs incurred.

1. Interest will accrue on the outstanding principal at the rate of 8 percent per annum.

2. Interest on each disbursement will accrue from the date of disbursement until repaid, canceled or fulfilled. Accrued interest will be capitalized when the recipient enters repayment status.

3. Repayment Status. The recipient enters repayment status the first of the month following:

a. determination by LASFAC that the recipient cannot complete fulfillment by teaching within the required time period;

b. notification of LASFAC by the recipient that monetary repayment is desired;

c. six months after LASFAC determines that the recipient is no longer pursuing a degree program or course of study leading to a degree in education or alternative program leading to regular certification as a teacher at the elementary or secondary school level.

4. The annual repayment amount will be the greater of:

a. the amount necessary to repay the capitalized amount within 10 years; or

b. \$1,200 per year or the unpaid balance, whichever is less.

5. Recipients in repayment status may have their payments deferred in accordance with §2105.B, Deferment of

Repayment Obligation.

6. During the period of time a recipient is in deferment status, a recipient is not required to make repayments and interest does not accrue.

7. The period of time for completion of repayment will be extended by a period of time equal to the length of time the recipient is in deferment status.

D. Cancellation. The obligation to repay any remaining unpaid balance of the TOPS Teacher Award shall be canceled in the event either of the following conditions occur:

1. upon submission to LASFAC of a sworn affidavit of a qualified physician that the recipient is precluded from gainful employment because of a complete and permanent medical disability or condition.

2. Upon submission to LASFAC of a death certificate, or other evidence conclusive under State law, that the recipient is deceased.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

## **Chapter 11. Rockefeller State Wildlife Scholarship**

### **§1101. General Provisions**

A. Legislative Authority. The Louisiana State Wildlife Scholarship Program was created and amended by the following Acts of the Louisiana Legislature:

1. Act 807 of the 1980 Regular Legislative Session;
2. Act 849 of the 1987 Regular Legislative Session;
3. Act 707 of the 1989 Regular Legislative Session.

B. Description, History and Purpose

1. The Rockefeller State Wildlife Scholarship Program:  
a. is funded with dedicated monies and offers competitively awarded scholarships valued at \$1,000 per academic year to both undergraduate and graduate students majoring in forestry, wildlife, or marine science as it pertains to wildlife;

b. was established in 1980.

2. In accepting the Rockefeller State Wildlife Scholarship, the student agrees to attain a degree in one of the required fields at a Louisiana public college or university offering such degrees. If the student fails to successfully complete an eligible course of study, as per the agreement made between LASFAC and the student, the funds must be repaid with interest.

C. Award Amounts

1. The annual award is \$1,000.

2. The cumulative maximum award is \$7,000 for up to five years of undergraduate and two years of graduate study.

3. Recipients receive \$500 each fall and spring term.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§1103. Establishing Eligibility**

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

1. be a U.S. citizen or national or eligible noncitizen, and be registered with the Selective Service, if required; and

2. be a resident of Louisiana, as defined in Chapter 3 of LAC 28:IV; and

3. annually, submit the completed Free Application for Federal Student Aid (FAFSA) or the Renewal FAFSA, whichever is applicable to the student, by the state aid deadline defined in §503; and

4. complete and submit such documentary evidence as may be required by LASFAC; and

5. be in compliance with the terms of other federal and state aid programs which the applicant may be receiving and which are administered by LASFAC; and

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

#### **§1105. Selection Criteria**

Recipients are competitively selected for an award based upon the merit rank score assigned to each eligible applicant. The merit ranking formula is defined in §301.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

#### **§1107. Maintaining Eligibility**

To continue receiving the Rockefeller State Wildlife Scholarship, recipients must meet all of the following criteria:

1. have received less than seven academic years (five undergraduate and two graduate) of funding under the Rockefeller State Wildlife Scholarship Program; and

2. at the close of each academic year (ending with the spring semester or quarter), have earned at least 24 hours total credit during the fall, winter and spring terms at an institution defining 12 semester or eight quarter hours as the minimum for full-time undergraduate status or earn at least 18 hours total credit during the fall, winter and spring terms at an institution defining nine semester hours as the minimum for full-time graduate status; and

3. achieve a cumulative grade point average of at least 2.50 at the end of the first academic year and each academic year thereafter; and

4. continue to enroll each subsequent semester or quarter (excluding summer sessions and intersessions) at the same institution unless granted an exception for cause and/or approval for transfer of the award by LASFAC; and

5. continue to pursue a course of study leading to an undergraduate or graduate degree in wildlife, forestry or marine science.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

#### **§1109. Completion of Promissory Note and Acceptance of Award**

Prior to receiving an award, the recipient must agree to the terms and conditions contained in the Rockefeller State Wildlife Scholarship Program Promissory Note (LASFAC-RS02), by completing the form and returning it to LASFAC by the specified deadline. The promissory note obligates the recipient to obtain a Wildlife, Forestry or Marine Science degree or repay the scholarship funds received, plus accrued interest and any collection costs incurred.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

#### **§1111. Discharge of Obligation**

A. The loan obligation may be discharged by graduation in an eligible major, monetary repayment or cancellation.

B. Graduation Fulfillment. Fulfillment of undergraduate awards is accomplished by the recipient's attainment of a bachelor's degree; fulfillment of graduate awards is accomplished by attainment of a master's or doctorate degree, in wildlife, forestry or marine science.

C. Monetary Repayment. Recipients who do not discharge the obligation by graduation fulfillment and who are not eligible for discharge by cancellation must repay the loan principal, plus accrued interest and any collection costs incurred.

1. Interest accrues on the outstanding principal at the rate of 8 percent per annum.

2. Interest on each disbursement accrues from the date of disbursement until repaid, canceled or fulfilled. Accrued interest will be capitalized when the recipient enters repayment status.

3. Repayment Status. The recipient enters repayment status the first day of the month following:

a. notification of LASFAC by the recipient that monetary repayment is desired; or

b. six months after LASFAC determines that the recipient is no longer pursuing a degree program or course of study leading to a degree in wildlife, forestry or marine science.

4. The annual repayment amount will be the greater of:

a. the amount necessary to repay the capitalized amount within seven years; or

b. \$1,200 per year or the unpaid balance, whichever is less.

5. Recipients in repayment status may have their payments deferred in accordance with §2105.B, titled Deferment of Repayment Obligation.

a. During the period of time a recipient is in deferment status, the recipient is not required to make payments and interest does not accrue.

b. The period of time for completion of repayment will be extended by a period of time equal to the length of time the recipient is in deferment status.

D. Cancellation. The obligation to repay all or part of Rockefeller State Wildlife Scholarship Program funds shall be canceled in the event either of the following occur:

1. Upon submission to LASFAC of a sworn affidavit of a qualified physician that the recipient is precluded from completing the educational program and/or from gainful employment because of a complete and permanent medical disability or condition.

2. Upon submission to LASFAC of a death certificate, or other evidence conclusive under state law, that the recipient is deceased.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **Chapter 13. State Student Incentive Grant (SSIG)**

#### **§1301. General Provisions**

##### **A. Legislative Authority**

###### **1. Federal**

a. Title IV of the Higher Education Act of 1965;

b. 34 CFR Part 692, as amended;

c. Title IV of the Higher Education Amendments of 1992 (Public Law 102-325).

###### **2. State**

a. R.S. 17:3032.5;

b. Act 632 of the 1974 Regular Legislative Session;

c. Act 228 of the 1977 Regular Legislative Session.

B. Description, History and Purpose. The Louisiana State Student Incentive Grant Program (SSIG), first funded in 1975, provides need-based grants to academically qualified students using federal and state funds. These grants are to be used for educational expenses including tuition and fees, books and supplies, and living expenses, such as room, board and transportation.

C. Louisiana administers a decentralized SSIG Program. Certain functions of the program are delegated to participating schools. Schools approved for participation in the Louisiana SSIG Program must have federal eligibility and must annually submit a state application and be approved for state participation. Funding available for a specific award year is allocated to eligible in-state postsecondary institutions, who select and certify recipients to LASFAC. LASFAC forwards award funding to the institutions for disbursement to the student or student's account.

D. Award Amounts. Individual grants range from an annual minimum of \$200 to a maximum of \$2,000; however, the actual amount of each student's award is determined by the

financial aid office at the institution and is governed by the number of recipients selected and the amount of funds available. Awards are based upon a full academic year, excluding summer sessions and intersession, beginning with the fall term and concluding with the spring term.

E. Allocation of Funds. Annually, funds are allocated to postsecondary institutions based on school type, the school's prior year first-time, full-time enrollment and the amount of the prior year's allocation that was expended. Initial funds, for first-time recipients, are computed as a percentage of all participating institutions first-time, full-time enrollment as of October 10 of the prior fiscal year. Continuation funds for students who had previously received SSIG are computed as a percentage of the allocated funds used during the previous year. The continuation formula applies 60 percent for four year schools and 40 percent for two year schools.

F. Reallocation of Funds. Uncommitted institutional allotted funds are reallocated if not committed by the deadline of November 1 for colleges and universities and January 1 for proprietary schools and campuses of Louisiana Technical College. The method of reallocation is dependent upon the amount of funds available for reallocation. If the reallocation amount is less than \$50,000, then only two and four year colleges and universities, which have fully committed their original allotment by the appropriate deadline, receive a reallocation. If \$50,000 or more is available for reallocation, it is reallocated to eligible schools of all types, which have fully committed their original allotment by the appropriate deadline.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

#### **§1303. Establishing Eligibility**

SSIG applicants must meet all of the following criteria:

1. be a U.S. citizen or national or eligible noncitizen, and registered with the Selective Service, if required; and

2. be a resident of Louisiana, as defined in §301; and

3. annually, submit the completed Free Application for Federal Student Aid (FAFSA) or Renewal FAFSA, whichever is available to the applicant, by the state deadline defined in §503 and any deadline imposed by the institution attended; and

4. have a high school diploma with at least a 2.00 cumulative grade point average, or a minimum average score of 45 on the General Educational Development (GED) test, or an ACT composite score of at least 20, or a postsecondary grade point average of at least 2.00 from the most recent term; and

5. be selected and certified by the school for receipt of an SSIG award, contingent upon final approval by LASFAC; and

6. meet any additional selection criteria established by the individual institution participating in the SSIG Program; and

7. be certified as a full-time undergraduate student in an eligible program at an eligible postsecondary institution, as defined in §1901; and either:

a. be enrolled full time at the time of disbursement if disbursement occurs on or prior to the fourteenth class day (ninth class day for Louisiana Tech); or

b. be enrolled full time as of the fourteenth class day (ninth class day at Louisiana Tech) and is enrolled at least half-time at the time of disbursement if disbursement occurs after the fourteenth class day (ninth class day at Louisiana Tech); and

8. have substantial financial need, as defined in §301; and

9. be in compliance with the terms of other federal and state aid programs which the applicant may be receiving and which are administered by LASFAC; and

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

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

12. not be in default of an educational loan.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§1305. Maintaining Eligibility**

To continue receiving an SSIG Award, the recipient must meet all of the following criteria:

1. meet all of the initial eligibility criteria listed in §1303; and

2. maintain a cumulative postsecondary grade point average of at least 2.00 calculated on a 4.00 scale by the conclusion of the spring term.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

## **Chapter 15. T.H. Harris Scholarship**

### **§1501. General Provisions**

#### **A. Legislative Authority**

1. R.S. 17:3036.1;
2. Act 24 of the 1938 Regular Legislative Session;
3. Act 199 of the 1940 Regular Legislative Session;
4. Act 19 of the 1942 Regular Legislative Session;
5. Act 499 of the 1948 Regular Legislative Session;
6. Act 83 of the 1977 Regular Legislative Session;
7. Act 710 of the 1985 Regular Legislative Session;
8. Act 663 of the 1990 Regular Legislative Session.

**B. Description, History and Purpose.** The T. H. Harris Scholarship Program was first funded with state general funds in 1942 for the purpose of granting scholarships to deserving youth enrolling at state-supported colleges or universities. A maximum cumulative award, assuming the recipient maintains eligibility, is \$2,000 for five years of study. Effective with award year 1996-97, applications are not being accepted and the program is being phased out. Students awarded during the 1995-96 award year, continue to receive an award, as long as funds are available and they maintain continuing academic eligibility.

**C. Award Amounts.** The annual award is \$400, with a cumulative maximum award of \$2,000 for five years.

Recipients receive \$200 each fall and spring term, less a \$5 award fee.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§1503. Maintaining Eligibility**

To continue to receive T. H. Harris Scholarship funds, recipients must meet all of the following criteria:

1. be in compliance with the terms of other federal and state aid programs which the applicant may be receiving and which are administered by LASFAC; and

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

3. continue to enroll as a full-time undergraduate student in a two- or four-year public college or university, unless granted an exception for cause by LASFAC; and

4. successfully complete the minimum number of hours required for a full-time student as defined in §301; and

5. achieve a cumulative grade point average of at least 3.00, on a 4.00 scale, at the conclusion of the spring term each academic year; and

6. have received less than 10 semesters of T.H. Harris funding.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

## **Chapter 17. Responsibilities of High Schools, School Boards, Special School Governing Boards, the Louisiana Department of Education and LASFAC on Behalf of Eligible Non-Louisiana High Schools**

### **§1701. High School Eligibility to Participate**

Graduates of the following high schools are eligible to participate in LASFAC Scholarship and Grant programs.

1. Louisiana Public High Schools. Louisiana public high schools as listed in the *Louisiana School Directory* (Louisiana Department of Education Bulletin 1462).

2. Approved Nonpublic High Schools. Board of Elementary and Secondary Education (BESE) approved nonpublic high schools as listed in the *Louisiana School Directory* (Bulletin 1462), as an approved nonpublic school which meets the standards specified in *The Louisiana Handbook for School Administrators* (Bulletin 741). For the purposes of LAC 28:IV, approved nonpublic schools include private or diocesan high schools classified annually by the Department of Education as approved, provisionally-approved or probationally-approved.

3. Eligible Non-Louisiana High Schools. Eligible non-Louisiana high schools are defined as high schools which meet all of the following criteria:

a. are in a state adjoining the state of Louisiana; and

b. have provided LASFAC with acceptable evidence of an agreement dated prior to June 5, 1994, between a parish school system and the high school's local governing authority, which authorizes the attendance of students who are residents of Louisiana; and



c. have students who graduate during the academic year preceding the award year, who were residing in Louisiana and who are Louisiana domiciled and were funded through the Louisiana Minimum Foundation Program; and

d. have certified the academic performance of Louisiana graduates, in accordance with §1703.

4. Other Out-of-State High Schools. Graduates of other out-of-state high schools located in the United States are eligible to participate in the Rockefeller State Wildlife Scholarship and the State Student Incentive Grant Programs only.

5. General Education Diploma Recipients. Non-high school graduates earning a General Education Diploma (GED) in lieu of a high school diploma are eligible for participation in the State Student Incentive Grant Program only.

6. Home Study Program Students. Students enrolled in a state-approved home study program who score in the upper 5 percent in the state on the National Merit Examination and meet other requirements of the program are eligible for the TOPS Performance Award only.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### §1703. High School's Certification of Student Achievement

#### A. Certification Form and Data Elements

1. Responsibility for identification and certification of high school graduates who qualify for TOPS awards is as follows:

a. each city and parish school board for the high schools under their jurisdiction.

b. the principal or headmaster of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE)

c. the principal or headmaster of eligible non-Louisiana high schools,

2. The Louisiana Department of Education shall report to LASFAC the names of students enrolled in a state-approved home study program who score in the upper 5 percent in the state on the National Merit Examination.

3. The certification form shall be completed, certified and returned to LASFAC annually.

4. The certification shall be returned to LASFAC by the deadline specified on the form.

5. The certification shall be on a form provided by LASFAC or in an electronic format pre-approved by LASFAC.

6. The certification form includes, but is not limited to, the following data elements:

a. student's name, address, phone number and social security number;

b. month and year of high school graduation;

c. final cumulative high school grade point average for all courses reflected on the transcript, converted to a maximum 4.00 scale, if applicable;

d. the number of core units earned and the number of core units unavailable to the student at the school attended;

e. the total number of graduates in the graduating class;

f. those students who graduated in the top 5 percent in accordance with §1703.C.2.a.i.

B. Certification of Cumulative High School Grade Point Average (HSGPA). High school officials are required to certify to LASFAC the final cumulative high school grade point average of each applicant and average shall be:

1. inclusive of the grades recorded for all courses on the applicant's official high school transcript;

2. each applicant's final cumulative high school grade point average must be reported on a maximum 4.00 scale.

a. The following grading conversion shall be used to report the applicant's cumulative high school grade point average:

i. letter grade A = 4 quality points;

ii. letter grade B = 3 quality points;

iii. letter grade C = 2 quality points;

iv. letter grade D = 1 quality point.

b. Schools which award more than 4 quality points for a course must convert the course grade to a maximum 4.00 scale using the formula described in the example that follows. [In this example, the school awards one extra quality point for an honors course.]

i. Example. An applicant earned a C in an Honors English IV course and received 3 out of the 5 possible quality points that could have been awarded for the course.

ii. In converting this course grade to a standard 4.00 maximum scale, the following formula must be used:

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} \cdot \frac{X (\text{Converted Quality Points})}{4.00 (\text{Maximum Scale})}$$

$$\frac{3.00 \cdot X}{5.00 \cdot 4.00}$$

By cross multiplying,

$$5X \cdot 12; X \cdot 2.40$$

iii. In this example, the quality points for this Honors English IV course should be recorded as 2.40 when the school calculates and reports the student's cumulative high school grade point average.

C. Certifying Graduates for the TOPS Performance Award

1. Policies for Determining the Top 5 Percent of Each Graduating Class. City and parish school boards, nonpublic high schools, special school governing boards, and LASFAC on behalf of eligible non-Louisiana high schools, shall adopt, publish and forward to LASFAC criteria for ranking graduates and determining the top 5 percent of the graduating class for high schools under their jurisdiction. Such criteria shall:

a. consider only the academic grades for those courses recorded on the student's official high school transcript; and

b. define the academic courses which are to be considered in determining academic class ranking; and

c. define the procedure by which students who would otherwise have equal academic class ranking may be ranked (tie-breaker procedure). This may include an evaluation of students' academic grades on a set of predetermined core academic courses such as English, math and science or an

evaluation of the level of difficulty of the courses taken by the students, such as honors courses and higher level math or science courses; and

d. be adopted by an affirmative act taken during a public meeting.

2. Formula for Determining the Number of Graduates in the Top 5 Percent

a. In computing the top 5 percent of each Louisiana high school's graduating class, apply the following formula to compute the maximum number of graduates who may rank in the top 5 percent for the purposes of the performance award:

i. the total number of students who are Louisiana residents receiving high school diplomas from the institution during the academic year preceding the award year, multiplied by the figure 0.05, and, if not a whole number, rounded up to the next whole number. Foreign exchange students and other nonresidents shall not be counted as members of the graduating class for the purpose of this computation.

ii. Example. For a high school that awarded state high school diplomas to two summer graduates, seven midyear graduates and 79 spring graduates during the academic year, the following computation would apply.

$$(2\%7\%79) \cdot 88; (88 \times 0.05) \cdot 4.4;$$

4.4 rounds up to 5.0

iii. Accordingly, five students may be selected for the performance award at the high school depicted in the example.

b. In computing the top 5 percent of each eligible non-Louisiana high school's graduating class and calculating the number of Louisiana residents to be named as performance award recipients, apply the following formulas.

i. The total number of students, both Louisiana residents and non-Louisiana residents, receiving a high school diploma from the institution during the academic year preceding the award year, multiplied by the figure 0.05, and, if not a whole number, rounded up to the next whole number. Example:

$$\text{Total Graduates} \cdot 69; (69 \times 0.05) \cdot 3.45;$$

rounds up to 4.0

ii. The number of academic year graduates who are Louisiana residents funded through the Louisiana Minimum Foundation Program (MFP), multiplied by the figure 0.05, and, if not a whole number, rounded up to the next whole number. (Louisiana resident graduates not funded through MFP shall not be counted in this calculation). Example:

$$\text{MFP Graduates} \cdot 23; (23 \times 0.05) \cdot 1.15$$

rounds up to 2.0

iii. To be certified as a performance award recipient, the student must rank both in the top 5 percent of the non-Louisiana high school's total academic year graduating

class, as well as in the top 5 percent of MFP-funded Louisiana residents in the graduating class.

iv. In the examples provided above, the maximum number of Louisiana residents to be certified for the performance award is two, and the minimum number is zero. If only one Louisiana resident ranked in the top 5 percent (4 of 69) of the total graduates, then only one student could be certified to the performance award. Conversely, if three Louisiana residents ranked in the top 5 percent (4 of 69), only the top two of these three could be certified.

3. Ensure that the approved selection criteria are publicly posted in each high school under the board or headmaster's jurisdiction and provide a copy of the criteria to LASFAC.

4. Ensure that amendments to the criteria, as approved by the board or headmaster, shall only be effective for the years following the year in which amended.

5. Certifying Students for the TOPS Performance Award. Of the students ranked in the top 5 percent of their graduating class in accordance with this §1703, only those meeting the following criteria may be listed on the certification form:

a. those students who have attained a final cumulative high school grade point average of at least a 3.50 on a 4.00 maximum scale; and

b. for graduates of the 2001 high school graduating class who have successfully completed the core curriculum as defined in Section §301.

D. Certification by Sworn Affidavit. The school board superintendent or nonpublic high school headmaster or principal shall certify by sworn affidavit that:

1. all data supplied on the certification form are true and reflect the official records of the school for the students listed; and

2. records pertaining to the listed students will be maintained and available upon request to LASFAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

3. the school board or school under the superintendent's or principal's jurisdiction will reimburse LASFAC for any awards disbursed to postsecondary institutions on behalf of students who were incorrectly certified.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

**§1705. Notification of Certified Students**

A. High schools are required to present a certificate of achievement during the graduation ceremony or other school reception to students qualifying as recipients of TOPS Performance and Honors Awards.

B. High schools are required to invite members of the Louisiana Legislature representing the school's district to attend the ceremony or reception and make the presentation awarding the endorsed certificates of achievement.

C. If the certifying authority (school board, principal, headmaster or State Department of Education) elects to notify students of their certification, then the following disclaimer shall be included in any communication to the student:

"Although you have been certified as academically eligible for a Tuition Opportunity Program for Students (TOPS) Award, you must satisfy all of the following conditions to redeem a scholarship under this program:

1. You must be a Louisiana resident as defined by the Louisiana Student Financial Assistance Commission; and
2. You must be accepted for enrollment by an eligible Louisiana college or university or campus of Louisiana Technical College and be registered as a full-time undergraduate student; and
3. You must annually apply for federal student aid by the deadline required for consideration for state aid; and
4. You must have met all academic and nonacademic requirements and be officially notified of your award by the Louisiana Student Financial Assistance Commission (LASFAC)."

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

## **Chapter 19. Responsibilities of Postsecondary Institutions**

### **§1901. Postsecondary Institution's Eligibility to Participate**

A. Louisiana two- and four-year public colleges and universities are authorized to participate in the Tuition Opportunity Program for Students (TOPS), Rockefeller State Wildlife Scholarship, State Student Incentive Grant (SSIG) and the T.H. Harris Scholarship.

B. Regionally accredited private colleges and universities which are members of the Louisiana Association of Independent Colleges and Universities, Inc. (LAICU) are authorized to participate in TOPS and SSIG. As of November 1997, LAICU membership included Centenary College, Dillard University, Louisiana College, Loyola University, Our Lady of the Lake College of Nursing and Allied Health, Our Lady of Holy Cross College, Tulane University and Xavier University.

C. Campuses of Louisiana Technical College are authorized to participate in TOPS and SSIG.

D. Approved Louisiana proprietary and beauty schools are authorized to participate in SSIG only.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§1903. Postsecondary Institution Responsibilities**

A. Certification of Student Data. Upon request by LASFAC, and for the purpose of determining an applicant's eligibility for a program award, an institution will report the following student data:

1. admission and full-time undergraduate enrollment; and
2. eligibility for, or enrollment in, a course of study leading to initial teacher certification; and
3. enrollment in math or chemistry as a major while pursuing teacher certification; and
4. graduate or undergraduate enrollment in wildlife forestry or marine science; and
5. cumulative college grade point average; and
6. cumulative college credit hours earned; and
7. academic year hours earned.

B. Program Billing. Each term, institutions shall bill LASFAC for students who are recipients of a TOPS Award and who have enrolled at the institution in accordance with the following terms and conditions:

1. institutions may bill only for students certified eligible by LASFAC; and

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

3. institutions will not bill LASFAC for any awardee who has elected to accept a full tuition waiver or award from another source which is specifically designated for tuition only; and

4. to prevent the student's total financial assistance from exceeding the institution's cost of education or some other limitation established by the institution which may be less than the cost of education, the institution may reduce the amount of the award to be paid by the TOPS Opportunity, Performance, Honors or Teacher Awards and subsequently billed to LASFAC; and

5. annually, two- and four-year institutions are required to provide LASFAC a current fee schedule, as defined in §301, for TOPS billing purposes. The schedule must include:

- a. the total cost of tuition, which shall not include any fees charged by the institution that are in addition to the basic course enrollment charges, as defined in §301; and

- b. an itemized description of the composition of the mandatory fees listed on the fee schedule must also be supplied;

6. campuses of Louisiana Technical College are exempt from furnishing a schedule of fees, but must bill LASFAC on the first class day of each quarter for three times the monthly amount established by the Board of Elementary and Secondary Education (BESE) for full-time attendance; and

7. certify that the institution will reimburse LASFAC for any award funds incorrectly disbursed to ineligible students; and

8. upon the school's certification that a recipient of a TOPS Award is enrolled full time, institutions may bill for

and LASFAC will reimburse the institution for each such recipient as follows:

a. public two- and four-year colleges and universities may bill for an amount up to the maximum amount listed on the approved fee schedule at that institution;

b. Louisiana Technical College campuses may bill each quarter for three times the monthly amount established by the Board of Elementary and Secondary Education (BESE) for full-time attendance;

c. LAICU member colleges and universities may bill for an amount up to the average public tuition amount, as defined in §301;

d. for recipients of the performance and honors awards, institutions may bill LASFAC for the stipend that accompanies these awards, in the amounts of \$200 or \$400 per semester, respectively;

e. Louisiana Technical College campuses may not bill LASFAC for stipends.

C. Annual Application for Participation in, and Certification of Recipients of, the SSIG Program

1. Annually, LASFAC forwards SSIG institutional participation agreements to those schools participating in the program during the prior award year and, upon written requests received, to schools not participating in the SSIG Program during the prior award year. To be eligible for allotment of SSIG funds the institution must meet all of the following requirements:

a. complete and return the annual SSIG application by the specified deadline; and

b. certify that students and parents will not be charged a fee for the collection of information used to determine the student's eligibility for SSIG; and

c. certify that students listed on the recipient roster meet federal, state and institutional specific SSIG eligibility criteria; and

d. certify that if the institution's SSIG allotment is based in part on the financial need of independent students, as defined by the U.S. Department of Education, a reasonable portion of the institution's allotment is being made available to independent students; and

e. certify that each SSIG recipient's total package of aid does not exceed the student's financial need; and

f. certify that SSIG funds recovered from overawards, refunds, and/or repayments, as defined in §301, during the applicable award period shall be returned to LASFAC to be reissued to other qualified students. Funds recovered from overawards, refunds and/or repayments after the applicable award period shall be returned to LASFAC for return to the U.S. Department of Education and/or the state of Louisiana. The amount of overaward, refund and/or repayment shall be determined according to the school's policy established in accordance with federal regulations.

2. Annually, LASFAC provides eligible institutions an official allotment schedule, recipient roster and institution certification forms. Institutions are required to:

a. complete and return recipient rosters and institutional certification forms to ensure expenditure of allotted SSIG awards by the school specific deadlines of

November 1 for public and LAICU member two- and four-year colleges and universities and January 1 for campuses of Louisiana Technical College and proprietary institutions; and

b. submit changes to the recipient roster by completing a replacement roster, provided by LASFAC; and

c. certify that if any SSIG funds are released in error to ineligible students, the institution will either recover the award amount from the students and refund to LASFAC or remit the refund due.

D. Disbursement of Funds. Upon receipt of award funds and prior to their disbursement to students, the institution will:

1. for TOPS Teacher Award recipients:

a. verify that the recipient is enrolled full time, in an approved degree program or course of study leading to a degree in education or alternative program leading to regular certification as a teacher at the elementary or secondary level; or

b. if designated as a math or chemistry major, verify enrollment in a course of study leading to certification as a math or chemistry teacher;

2. for Rockefeller State Wildlife Scholarship recipients verify undergraduate or graduate enrollment, whichever is applicable to the student, in

a. wildlife; or

b. forestry; or

c. marine science; or

d. other major specified by the Louisiana Department of Wildlife and Fisheries as meeting their criteria for receipt of scholarship funds;

3. release award funds by crediting the student's account within 14 days of the institution's receipt of funds or disbursing individual award checks to recipients as instructed by LASFAC. Individual award checks for the T.H. Harris Scholarship, Rockefeller State Wildlife Scholarship, TOPS Teacher Award and SSIG must be released to eligible recipients within 30 days of receipt by the school or be returned to LASFAC.

E. Reporting of Academic Data. At the conclusion of each academic year, the institution will complete and return to LASFAC, a College Academic Grade Report, including but not limited to the following data elements:

1. academic year hours earned; and

2. cumulative hours earned; and

3. cumulative grade point average;

4. academic standing and, if applicable, date of placement on academic probation; and

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

F. Records Retention. Records pertaining to the students listed on the billing certification form will be subject to audit as required by state statute. Such records will be maintained for a minimum of three years and be available upon request to LASFAC and the Louisiana legislative auditor.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

## Chapter 21. Miscellaneous Provisions and Exceptions

### §2101. Academic Suspension of Awards and

#### Reinstatement

A. Students denied an award for their failure to maintain the required cumulative college grade point average and academic good standing may be reinstated upon attainment of the required cumulative grade point average and the lifting of academic probation provided that the period of ineligibility did not persist for more than two years from the date of loss of eligibility.

B. Students whose TOPS Performance and Honors Awards are reinstated are ineligible for annual stipends.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### §2103. Exceptions to the Continuous Enrollment Requirement

A. Continuous Enrollment Requirement. To maintain eligibility, all scholarship programs require recipients to continue to enroll as full-time students, as defined in §301, each consecutive semester or quarter, excluding summer sessions and intersession, at two and four year colleges and universities. Recipients who cannot meet this requirement may be granted an exception for cause, as determined by LASFAC.

B. Less Than Full-Time Attendance. The LASFAC will authorize awards under the TOPS Opportunity, Performance, Honors and Teachers Awards and the T.H. Harris Scholarship Program for less than full-time enrollment provided that the student meets all other eligibility criteria and at least one of the following:

1. requires less than full-time enrollment to complete the undergraduate degree; or
2. is enrolled in a degree program that defines *full time* as less than 12 hours per semester or eight hours per quarter; or
3. requires less than full-time enrollment to complete requirements for a specified course of study or clinical program.

C. Procedure for Requesting Exceptions to the Continuous Enrollment Requirement

1. Recipient must submit the exception request form, with documentary evidence, within the deadline specified.
2. If determined eligible for an exception, the recipient will be awarded if he or she enrolls in the first fall, winter or sprint term immediately following the exception ending date.
3. If determined ineligible for an exception, subsequent appeals are to be processed in accordance with LASFAC's appeal procedures as defined in §2109.

D. Qualifying Exceptions to the Continuous Enrollment Requirement

1. Parental Leave
  - a. Definition. The student/recipient must be pregnant or caring for a newborn or newly-adopted child.
  - b. Certification Requirements. A completed exception request form, certified by a written statement from a doctor of medicine who is legally authorized to practice or an authorized official of the adoption agency.

- c. Acceptable Documentation. Includes dates of required leave of absence, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, the length of the recovery period, the beginning and ending dates of the doctor's care, the required treatment.

- d. Filing Requirements. The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days after the occurrence of the qualifying exception.

- e. Maximum Length of Exception. Up to one academic year per child.

#### 2. Rehabilitation Program

- a. Definition. The student/recipient must be receiving rehabilitation in a program administered by a licensed rehabilitation center under a written individualized plan with specific dates of beginning and ending services.

- b. Certification Requirements. A completed exception request form, certified by a rehabilitation counselor and doctor of medicine.

- c. Acceptable Documentation. Includes dates of the required leave of absence, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, the length of the recovery period, the beginning and ending dates of the doctor's care, the required treatment.

- d. Filing Requirements. The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days after occurrence of the qualifying exception.

- e. Maximum Length of Exception. Up to two academic years per occurrence.

#### 3. Temporary Disability

- a. Definition. The student/recipient must be recovering from an accident, injury, illness or required surgery that did not previously exist when he or she originally applied for the applicable scholarship and grant program(s), or his or her pre-existing condition has substantially deteriorated since the time of application, or the student/recipient's spouse, dependent, parent or guardian requires continuous care for similar conditions for at least 60 days due to an accident, illness, injury or required surgery.

- b. Certification Requirements. Certified by a doctor of medicine who is legally authorized to practice and by a completed exception request form.

- c. Acceptable Documentation. Includes dates of the required leave of absence, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, the length of the recovery period, the beginning and ending dates of the doctor's care, the required treatment.

- d. Filing Requirements. The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days after occurrence of the qualifying exception.

- e. Maximum Length of Exception. Up to two academic years for recipient; up to a maximum of one academic year for care of a disabled dependent, spouse or parent.

#### 4. Internship/Residency Program

- a. Definition. The student/recipient must be enrolled in a required program that must be completed in order to begin

professional practice or service; it must be a program where the student is working toward an appropriate scholarship and grant program degree.

b. **Certification Requirements.** Certified by a written statement from an internship or residency program official and a completed exception request form.

c. **Acceptable Documentation.** Includes dates of required leave of absence from the school's dean, academic counselor, or major professor stating that the residency/internship is a requirement toward fulfilling an appropriate scholarship and grant program degree, and that the student has been accepted into the residency/internship program, the semester(s) or number of days involved, the length of the internship/residency period, the beginning and ending dates of the leave of absence.

d. **Filing Requirements.** The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days of notification of acceptance into the internship.

e. **Maximum Length of Exception.** Up to two academic years of required program or study.

#### 5. Cooperative Work/Study Program

a. **Definition.** The student/recipient must be a registered student in the appropriate school offering the cooperative work/study program. Even though the school may have entrance requirements for the cooperative work/study programs, the student/recipient must continue to meet and maintain scholarship and grant program cumulative grade point average requirements.

b. **Certification Requirements.** Certified by a written statement from the college/school official including dates of enrollment and termination and a completed exception request form.

c. **Acceptable Documentation.** Includes dates of leave of absence from the school's dean, academic counselor, or major professor stating that the student is enrolled in an official cooperative work/study program sponsored by the university, the semester(s) or number of days involved, the beginning and ending dates of the cooperative work/study program.

d. **Filing Requirements.** The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days of acceptance into the cooperative work/study program.

e. **Maximum Length of Exception.** Up to one academic year or required program of study.

#### 6. Religious Commitment

a. **Definition.** The student/recipient must be a member of a religious group that requires the student to perform certain activities or obligations which necessitate taking a leave of absence from school.

b. **Certification Requirements.** Certified by a written statement from the college official, a completed exception request form, and a statement from the religious group's governing official.

c. **Acceptable Documentation.** Includes dates of the required leave of absence from the religious group's governing official, a completed exception request form, the

necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, the length of the religious obligation.

d. **Filing Requirements.** The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days after accepting or committing to the religious obligation.

e. **Maximum Length of Exception.** Up to two academic years.

#### 7. Death of Immediate Family Member

a. **Definition.** The student cannot attend school for at least 30 days due to recovering from the death of a spouse, parent, guardian, dependent, sister or brother or grandparent.

b. **Certification Requirements.** A written statement from the college official, a completed exception request form, and a copy of the death certificate or a doctor's or funeral director's verifying statement or a copy of the obituary published in the local newspaper.

c. **Acceptable Documentation.** Includes dates of leave of absence from the school's registrar, a doctor's statement if student/recipient care was needed, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved.

d. **Filing Requirements.** The student/recipient must file a completed exception request form with certification and documentation requirements within 60 days of the date of death.

e. **Maximum Length of Exception.** Up to one academic semester or two quarters per death.

#### 8. Military Service, Peace Corps, National Service Corps, VISTA

a. **Definition.** The student/recipient is called on active duty status with the United States Armed Forces or is performing emergency state service with the National Guard or is serving in the Peace Corps, National Service Corps or VISTA.

b. **Certification Requirements.** Certified by a written statement from the commanding officer or regional supervisor or certified military orders and by a completed exception request form.

c. **Acceptable Documentation.** Includes dates of required leave of absence, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, the length of duty (beginning and ending dates).

d. **Filing Requirements.** The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days after receipt of military orders or letter of appointment.

e. **Maximum Length of Exception.** Up to the length of the required service period.

#### 9. Exceptional Circumstances

a. **Definition.** The student/recipient has exceptional circumstances, other than those listed in §2103.D.1-8, which are beyond his immediate control and which necessitates full or partial withdrawal from, or non-enrollment in, an eligible postsecondary institution.

b. **Certification Requirement.** Certified by a notarized statement and by a completed exception request form.

c. Acceptable Documentation. The notarized statement should include attachments of copies of all documents relevant to the exceptional circumstance.

d. Filing Requirement. The student/recipient must file a completed exception request form, with the required notarized statement and documentation, within 60 days after the occurrence of the exceptional circumstance.

e. Maximum Length of Exception. Up to one academic year.

E. Nonqualifying Exceptions. Nonqualifying Exceptions include, but are not limited to:

1. the student is unaware of the continuation renewal requirements for a program and fails to meet such requirements;

2. the student failed to timely submit an exception request form for an exception to the continuous enrollment requirement.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

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

A. Monetary Repayment. Recipients of the Rockefeller State Wildlife Scholarship who do not meet their obligation to obtain a degree in wildlife, forestry or marine science and recipients of the TOPS Teacher Award who do not fulfill their obligation to teach the required number of years and who are not eligible for Discharge by Cancellation, must repay the loan principal plus accrued interest as delineated in §§1111 and 911, respectively.

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

1. Parental Leave

a. Definition. The student/recipient must be pregnant or caring for a newborn or newly-adopted child.

b. Certification Requirements. Certification by a written statement from a doctor of medicine who is legally authorized to practice or an authorized official of the adoption agency.

c. Acceptable Documentation. Includes dates of required leave of absence, the number of days involved, the length of the recovery period, the beginning and ending dates of the doctor's care, and the required treatment.

d. Filing Requirements. The recipient must request by letter, with the required certification and documentation, within 60 days after the occurrence of the qualifying event.

e. Maximum Length of Deferment. Up to one academic year.

2. Rehabilitation Program

a. Definition. The recipient must be receiving rehabilitation in a program administered by a licensed rehabilitation center under a written individualized plan with specific dates of beginning and ending services.

b. Certification Requirements. Certification by a rehabilitation counselor or doctor of medicine.

c. Acceptable Documentation. Includes dates of the required leave of absence, the semester(s) or number of days involved, the length of the recovery period, the beginning and ending dates of the doctor's care, the required treatment.

d. Filing Requirements. The recipient must file a written request, with the required certification and documentation, within 60 days after occurrence of the qualifying treatment.

e. Maximum Length of Deferment. Up to two academic years.

3. Temporary Disability of Recipient, Child, Parent, Spouse, or Guardian

a. Definition. Temporary total disability of recipient or recipient's dependent, parent, guardian or spouse of whom recipient is primary care-giver.

b. Certification Requirements. Certification by a qualified physician.

c. Acceptable Documentation. Includes dates of the required leave, the length of the recovery or disability period, the beginning and ending dates of the doctor's care, the required treatment.

d. Filing Requirements. The recipient must file a written request with the required certification and documentation no earlier than 30 days but within 60 days after the occurrence of disability.

e. Maximum Length of Deferment. A deferment under §2105.B.3 for Temporary Disability of the Maker shall not exceed 36 months. A deferment under §2105.B.3 for Temporary Disability of any other person shall not exceed 12 months.

4. Military Service, Peace Corps, National Service Corps, VISTA

a. Definition. The recipient is called on active duty status with the United States Armed Forces or is performing emergency state service with the National Guard or is serving in the Peace Corps, National Service Corps or VISTA.

b. Certification Requirements. Certified by a written statement from the commanding officer or regional supervisor or certified military orders.

c. Acceptable Documentation. Includes dates of required leave of absence, the semester(s) or number of days involved, the length of duty (beginning and ending dates).

d. Filing Requirements. The student/recipient must file a written request with the required certification and documentation, within 60 days after receipt of military orders or letter of appointment.

e. Maximum Length of Deferment. Up to the length of the required service period.

5. Recipient is engaging in a full-time course of study at an institution of higher education at the baccalaureate level or higher. A deferment under §2105.B.5 shall not exceed 36 months; or

6. Recipient is:

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **2107. Funding and Fees**

#### A. Limitation of Terms Funded

1. Routine funding for all Scholarship and Grant Programs is limited to the fall, winter and spring school terms.

2. Extensions will be granted for the TOPS Opportunity, Performance, and Honors Awards for an institution's educational programs that require recipients to attend summer sessions to complete the program's mandatory courses when such courses are not offered during regular terms.

B. Fees. The LASFAC may charge a variable fee not to exceed \$10 for each award check processed for recipients of the T.H. Harris Scholarship. This fee will be charged only if the Louisiana Legislature fails to appropriate sufficient state general funds for administration of this program. The LASFAC, at its discretion, may automatically deduct the fee from each T.H. Harris Scholarship award check.

C. Less than Full-Time Attendance. The LASFAC will authorize awards under the TOPS Opportunity, Performance, Honors and Teachers Awards and the T.H. Harris Scholarship Program for less than full-time enrollment provided that the student meets all other eligibility criteria and at least one of the following:

1. requires less than full-time enrollment to complete the undergraduate degree; or
2. is enrolled in a degree program that defines *full time* as less than 12 hours per semester or eight hours per quarter; or
3. requires less than full-time enrollment to complete requirements for a specified course of study or clinical program.

#### D. Insufficient Funds Appropriated

1. All State Scholarship and Grant Program Awards are contingent upon the annual appropriation of funds by the Louisiana Legislature.

2. In the event appropriated funds are insufficient to fully reimburse institutions for tuition awards and stipends for all students determined eligible for the TOPS Opportunity and Honors Awards for a given academic year, funding shall be allocated in the following priority:

- a. the number of students to whom awards shall be made shall be reduced by the number necessary to remain within budgetary expenditure authority;
- b. those students from families with the greatest ability to pay the student's tuition, as evidenced by the adjusted gross income reported by the family on the prior year's state and federal tax returns, shall be denied an award.
- c. funding is provided first to those students determined to have the most need, as evidenced by their families' smaller adjusted gross income;

d. from among those students otherwise eligible who are denied an award, those students whose families have the least capacity to pay, as evidenced by their families' lower adjusted gross income, shall be the first to receive an award if monies become available.

E. Stop Payment of Uncleared Checks. The LASFAC may stop payment on checks which are issued as scholarship or grant awards but not negotiated by September 1 following the close of the academic year for which they were issued.

F. Transferability of Funds. A student receiving an award under the Tuition Opportunity Program for Students (TOPS), Rockefeller State Wildlife Scholarship and/or the T.H. Harris Scholarship may have his award transferred to another postsecondary institution which is authorized to participate in these programs, as described in §1901. The student must meet all continuation requirements and submit a Scholarship and Grant Transfer Request Form.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

### **§2109. Appeal of Adverse Discretionary Decisions**

#### A. Appeal of Adverse Discretionary Decisions Policy

1. The Louisiana Student Financial Assistance Commission (LASFAC or commission) has established a formal appeal process consistent with the Louisiana Administrative Procedure Act by which aggrieved parties may appeal an agency adverse discretionary decision. An agency adverse discretionary decision is a decision made by agency staff based on an interpretation of legislative or regulatory intent and which has an adverse impact on an applicant or participant in a program administered by the commission. An applicant or program participant who believes the agency has incorrectly interpreted legislative or regulatory intent in making a decision and, said decision having adversely affected the applicant or participant, may file an appeal.

2. The appeal process allows for an initial review or hearing to be held by a hearing officer or an appeal committee appointed by the commission, depending upon the level of review requested.

3. If after the decision of the appeal committee or hearing officer the appellant is not satisfied, then he will have the right to seek review of the decision by the full commission.

4. If the commission refuses to review the decision of the hearing officer or the appeal committee, then the aggrieved party has the right to seek a rehearing on the matter by the full commission.

5. If the application for a rehearing is denied, then the aggrieved party has the right to seek judicial review.

#### B. Appeal of Adverse Discretionary Decisions Procedure

1. Adverse discretionary decisions made by the Louisiana Office of Student Financial Assistance may be appealed to the Louisiana Student Financial Assistance Commission.

a. Petitions for appeal must be in writing and filed within 30 days of notice of the decision or, if no notice is given within 30 days from becoming aware of or the date the



aggrieved party should have been aware of the adverse decision.

b. The appeal must be addressed to the Executive Director, Office of Student Financial Assistance and sent to Box 91202, Baton Rouge, LA 70821-9202, or hand delivered to the physical address of LASFAC in Baton Rouge.

c. Appeals may not be supplemented or amended after the lapse of 30 days. An appellant has the right to file a written appeal or have his appeal heard orally. Requests for an oral hearing must be made within the 30-day time period to file the appeal.

i. If no request for an oral hearing is made, then the appellant may submit documentation and/or written memorandum to support his appeal at least 15 days prior to the review of the commission or the appeal committee appointed by the commission. Appellant will be notified at least 30 days prior to the date of the review by the commission or the appeal committee appointed by the commission. The commission or the appeal committee will review all the evidence submitted and render a decision.

ii. If the appellant requests an oral hearing, then appellant will be given at least 30 days prior notice of the hearing. The commission shall appoint a hearing officer to hear the appeal of the appellant. All hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

2. If after the review of the appeal committee or after a hearing held before the hearing officer a decision adverse to the appellant is made, then appellant may seek to have the decision reviewed by the full commission.

a. The application for review must be made within 15 days of appellant receiving notice of the decision. The appellant may submit exceptions, written arguments or briefs to support the application for review.

b. No oral hearing shall be held at this level of review. All action is stayed pending review by the full commission.

i. If the full commission denies the application for review, then the action becomes final as of the date of the denial for review.

ii. If the full commission denies the application for review then it shall set a hearing date to review the decision of the hearing officer.

3. The appellant may seek a rehearing of an adverse decision made by the full commission. The request for rehearing must conform to the provisions and time limits set by R.S. 49:959. An application for rehearing does not stay any action taken by the commission.

4. Oral Hearing. All hearings shall be held pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

a. On the day of the oral hearing appellant and appellee shall be prepared to start the hearing at the time specified in the notice of hearing.

b. The hearing may be continued for good cause provided a written request for extension is received at the commission at least seven days prior to the date of the hearing.

i. All parties will be notified of a rescheduling or postponement of the hearing.

ii. Failure to be present at the hearing and ready to proceed may result in an adverse decision against the nonappearing party.

iii. Strict rules of evidence will not apply in these hearings. The appellant shall have the following rights at the hearing:

(a). the right to present testimony, introduce evidence, and call witnesses on his behalf;

(b). the right to cross exam witnesses called by the agency;

(c). the right to subpoena witnesses;

(d). the right to take depositions;

(e). prior to the hearing, the right and the opportunity to review agency records that are relevant to his appeal; and to make copies of those records at a cost of \$.20 per page;

(f). the right to be represented by counsel.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:

Interested persons may submit written comments on the statement until 4:30 p.m., February 20, 1998 to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Tuition Opportunity Program for Students

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Estimated costs to implement the program for FY 97-98 are \$6,240; for FY 98-99, \$13,313,321; and for FY 1999-2000, \$17,723,748. This includes an estimated \$6,240 for publication in the *Louisiana Register* in FY 1997-98; salaries for three positions of \$114,113 in FY 1998-99, and \$118,678 in FY 1999-2000; the costs for operating expenses, equipment, and professional services are expected to be \$64,337 in FY 1998-99 and \$37,292 in FY 1999-2000. Also included is \$13,134,871 in FY 1998-99 and \$17,567,778 in FY 199-2000 for the scholarship awards.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections is anticipated to result from this action.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule establishes procedures whereby students may apply for the Tuition Opportunity Program for Students (TOPS) award.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this change.

Jack L. Guinn  
Executive Director  
9801#079

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Air Quality and Radiation Protection  
Air Quality Division**

Comprehensive Toxic Air Pollutant Emission Control Program (LAC 33:III.5101, 5103, 5107, 5112)(AQ169)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.5101, 5103, 5107, 5122 (AQ169).

This proposed rule revises text to clarify the air toxic regulations, to correct some misspelled words, to revise paperwork requirements, and to revise the release reporting requirements during control equipment bypassing events. The rule also delists caprolactam from the Toxic Air Pollutants Supplemental List because EPA delisted this compound from the Clean Air Act Section 112 list of Hazardous Air Pollutants; also, there are no sources in Louisiana reporting caprolactam.

The basis and rationale for this proposed rule is to clarify the intent of the regulations and to reduce some of the reporting and paperwork requirements. The basis and rationale for delisting caprolactam are to mirror the federal regulations.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program**

**Subchapter A. Applicability, Definitions, and General Provisions**

**§5101. Applicability**

The provisions of this Subchapter apply to the owner or operator of any major source, as defined herein. The provisions of LAC 33:III.5105.A, 5107.A, B, and C, 5111.A.4, and 5113 apply to the owner or operator of any stationary source which was a major source upon promulgation of this Subchapter but which has achieved minor source status through reduction of emissions and reduction of potential to emit. Effective upon promulgation of applicable source category rules in accordance with R.S. 30:2060, the provisions of this Subchapter apply to the owner or operator of any minor

source, if specified by such rules. The provisions of this Subchapter do not apply to the consumer use, in a duration and frequency intended by the manufacturer, of products obtained through retail commerce, or to activities conducted on residential property. The provisions of this Subchapter do not apply to the distribution or application of pesticides.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1362 (December 1992), LR 23:56 (January 1997), LR 24:

**§5103. Definitions, Units, and Abbreviations**

A. The terms in this Subchapter are used as defined in LAC 33:III.111 except for those terms defined herein as follows:

\* \* \*

[See Prior Text]

*Major Source*—any stationary source (including all emission points and units of such source located within a contiguous area and under common control) of air pollutants that emits, or has the potential to emit, in the aggregate, 10 tons per year or more of any toxic air pollutant or 25 tons per year or more of any combination of toxic air pollutants listed in Table 51.2.

\* \* \*

[See Prior Text in A.Maximum Achievable Control Technology (MACT) - B.4]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1362 (December 1992), LR 23:57 (January 1997), LR 24:

**§5107. Reporting Requirements, Availability of Information, and Public Notice Provisions**

\* \* \*

[See Prior Text in A-B.1]

2. Emission Control Bypasses. Except as provided in Subsection B.6 of this Section, for any unauthorized discharge into the atmosphere of a toxic air pollutant as a result of bypassing an emission control device, where the emission control bypass was not the result of an upset, the owner or operator of the source shall notify the Air Quality Division of the bypass by telephone no later than 24 hours after the beginning of the bypass at (504) 765-0219. In the event the Air Quality Division is unable for any reason(s) to receive the notification as required, the owner or operator shall notify the department at (504) 342-1234 within 24 hours after the beginning of the bypass.

\* \* \*

[See Prior Text in B.3-D.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:890 (July 1993), amended by the Office of the Secretary, LR 19:1022 (August 1993),

repromulgated LR 19:1142 (September 1993), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:58 (January 1997), LR 24:

**§5112. Tables**

Table 51.1 Minimum Emission Rates Toxic Air Pollutants			
CLASS I - Known and Probable Human Carcinogens			
Compounds	Cas Number	Synonyms	Minimum Emission Rate (Pounds/ Year)
* * *			
[See Prior Text in Acrylonitrile -Nickel (and compounds) [1]]			
Nickel (refinery dust) [1]	7440-02-0		25.0
* * *			
[See Prior Text in Propylene Oxide-Vinyl Chloride]			

CLASS II - Suspected Human Carcinogens and Known or Suspected Human Reproductive Toxins			
Compounds	Cas Number	Synonyms	Minimum Emission Rate Pounds/ Year
***			
[See Prior Text in Acetaldehyde-Trichloroethylene]			
Vinylidene Chloride	75-35-4	1, 1-dichloroethylene	1,500.0
* * *			
[See Prior Text in Xylene (mixed isomers) [9]-Zinc (and compounds) [1]]			

\* \* \*

[See Prior Text in Table 51.1.Class III.Acute and Chronic (Non-Carcinogenic) Toxins-Table 51.2.Explanatory Note [12]]

Table 51.3 Louisiana Toxic Air Pollutants Supplemental List*			
Compounds	Cas Number	Class	Synonyms
* * *			
[See Prior Text in Acetamide-Bromoform]			
Calcium Cyanamide	156-62-7	III	
Captan	133-06-2	II	
* * *			
[See Prior Text in Carbaryl-1,3-Propane Sultone]			
beta-Propiolactone	57-57-8	II	2-oxetanone
* * *			
[See Prior Text in Propoxur-Vinyl Bromide]			

\* \* \*

[See Prior Text in Explanatory Notes]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1331 (December 1995), amended LR 24:

A public hearing will be held on February 27, 1998, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability

need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ169. Such comments must be received no later than March 6, 1998, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504)765-0486. Copies of this proposed regulation can be purchased at the above referenced address.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.:

7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Gus Von Bodungen  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Comprehensive Toxic Air Pollutant Emission  
Control Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No implementation costs (savings) from this proposed rule on state or local government are anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no effect on state or local governmental revenue collections from this rulemaking.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No costs and no significant economic benefits on nongovernmental groups by this rulemaking are anticipated.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no effect on competition and employment from this rulemaking.

Gus Von Bodungen  
Assistant Secretary  
9801#045

Richard W. England  
Assistant to the  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Air Quality and Radiation Protection  
Air Quality Division**

**Hazardous Air Pollutant (HAP) Control Technology  
Requirements for New Sources (LAC 33:III.551)(AQ168)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.551 (AQ168).

As required by section 112(g) of the Clean Air Act, all new major sources of air toxics are required to have a case-by-case maximum achievable control technology (MACT) determination when no federal MACT emission limitation has

been promulgated. The state is required by Louisiana's part 70 Operating Permit Program and 40 CFR part 63, subpart B, to adopt a 112(g) program that complies with the requirements of 40 CFR part 63, sections 63.40-63.44. This proposed rule, adopting and implementing the 112(g) program, carries out those requirements by requiring new major sources of air toxics to do MACT prior to EPA establishing a federal MACT standard. This proposed rule provides the affected facilities with direction and instruction in regards to applicability determinations, application requirements, and administrative procedures. In addition to adopting and implementing this proposed rule by June 28, 1998, the department must also certify to EPA that this program meets all requirements in 40 CFR part 63, sections 63.40-63.44. In the event the state fails to adopt this program, the state may still be able to make the case-by-case MACT determinations, or they may request that EPA make these determinations.

The basis and rationale for this proposed rule are to comply with the requirements of Louisiana's part 70 Operating Permit Program to adopt and implement the 112(g) program. Continued failure to adopt this rule could result in EPA sanctions for the state's failure to adequately administer and enforce Louisiana's part 70 Operating Permit Program.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33  
ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 5. Permit Procedures**

**§551. Hazardous Air Pollutant (HAP) Control  
Technology Requirements for New Sources**

A. Applicability. The provisions of this Section apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998. The provisions of this Section do not apply to major sources specifically regulated or exempted from regulation under a standard issued in accordance with section 112(d), 112(h), or 112(j) of the Clean Air Act and incorporated in 40 CFR part 63 or to major sources for which the owner or operator has received all necessary air quality permits for construction or reconstruction prior to June 29, 1998.

B. Definitions. The terms used in this Section have the meaning given to them in LAC 33:III.111 and 5103, the Clean Air Act, and 40 CFR part 63, subpart A except for those terms defined herein as follows:

*Affected Source*—the stationary source or group of stationary sources that, when fabricated, erected, or installed (on-site), meets the definition of "construct a major source" or the definition of "reconstruct a major source" contained in this Section.

*Available Information*—for the purposes of identifying control technology options for the affected source, information contained in the following information sources as of the date of approval of the MACT determination by the department:

- a. a relevant proposed regulation, including all supporting information;
- b. background information documents for a draft or proposed regulation;
- c. data and information available for the Control Technology Center developed in accordance with section 113 of the Clean Air Act;
- d. data and information contained in the Aerometric Information Retrieval System, including information in the MACT database;
- e. any additional information that can be expeditiously provided by the administrator; and
- f. for the purpose of determinations by the department, any additional information provided by the applicant or others and any additional information considered available by the department.

*Construct a Major Source—*

a. to fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources that is located within a contiguous area and under common control and that emits, or has the potential to emit, 10 tons per year of any HAP or 25 tons per year of any combination of HAPs; or

b. to fabricate, erect, or install at any developed site a new process or production unit that in and of itself emits, or has the potential to emit, 10 tons per year of any HAP or 25 tons per year of any combination of HAPs, unless the process or production unit satisfies the following criteria:

- i. all HAPs emitted by the process or production unit that would otherwise be controlled under the requirements of this Section are controlled by emission control equipment that was previously installed at the same site as the process or production unit;

- ii. the department determines:

- (a). within a period of five years prior to the fabrication, erection, or installation of the process or production unit, that the existing emission control equipment represents the best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR part 51 or 52, toxics-best available control technology (T-BACT), or MACT based on state air toxics rules for the category of pollutants that includes those HAPs to be emitted by the process or production unit; or

- (b). that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or state air toxic rule determination);

- iii. the department determines that the percent control efficiency for emissions of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

- iv. the department provides notice and an opportunity for public comment concerning its determination that criteria in §551.B.*Construct a Major Source*.b.i-iii apply and concerning the continued adequacy of any prior BACT, LAER, T-BACT, or state air toxic rule MACT determination;

- v. if any commentor has asserted that a prior BACT, LAER, T-BACT, or state air toxic rule MACT determination is no longer adequate, the department shall determine that the level of control required by that prior determination remains adequate; and

- vi. any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the department are applicable requirements under section 504(a) of the Clean Air Act either have been incorporated into any existing Title V permit for the affected facility or will be incorporated into such permit upon issuance.

*Control Technology*—measures, processes, methods, systems, or techniques to limit the emissions of HAPs through process changes, substitution of materials, or other modifications which:

- a. reduce the quantity of, or eliminate emissions of, such pollutant through process changes, substitution of materials, or other modifications;

- b. enclose systems or processes to eliminate emissions;

- c. collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;

- d. are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 U.S.C. 7412(h); or

- e. are the combination of §551.B.*Control Technology*.a-d.

*Electric Utility Steam Generating Units*—any fossil fuel-fired combustion unit, of more than 25 megawatts, that serves a generator that produces electricity and supplies more than one third of its potential electrical output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale.

*Greenfield Site*—a contiguous area under common control that is an undeveloped site.

*Maximum Achievable Control Technology (MACT) Emission Limitation for New Sources*—the emission limitation that is not less stringent than the emission limitation achieved in practice by the best controlled similar source and that reflects the maximum degree of reduction in emissions that the department, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

*Process or Production Unit*—any collection of structures and/or equipment that processes, assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

*Reconstruct a Major Source*—the replacement of components at an existing process or production unit that in and of itself emits, or has that potential to emit, 10 tons per year of any HAP or 25 tons per year of any combination of HAPs whenever:

- a. the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be

required to construct a comparable process or production unit; and

b. it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under this Subsection.

*Research and Development Activities*—activities conducted at a research or laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a de minimis manner.

*Similar Source*—a stationary source or process that has comparable emissions and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

C. Exemptions and Prohibitions. The requirements of this Section do not apply to:

1. electric utility steam generating units unless and until such time as these units are added to the source category list in accordance with section 112(c)(5) of the Clean Air Act;

2. stationary sources that are within a source category that has been deleted from the source category list in accordance with section 112(c)(9) of the Clean Air Act; and

3. research and development activities, as defined herein.

#### D. Source Obligation

1. No person may begin actual construction or reconstruction of a major source of hazardous air pollutants after June 29, 1998, unless the owner or operator obtains or revises a permit issued in accordance with Louisiana's part 70 Program (LAC 33:III.507) and follows the administrative procedures of that program; and

a. the department has made a final and effective case-by-case determination in accordance with the provisions of this Section such that emissions from the affected source will be controlled to a level no less stringent than the MACT emission limitation for new sources; or

b. the major source in question is specifically regulated by or exempted from regulation under a standard issued in accordance with section 112(d), 112(h), or 112(j) of the Clean Air Act and incorporated in 40 CFR part 63.

2. The owner or operator may request approval of case-by-case MACT determinations for alternative operating scenarios. Approval of such data satisfies the requirements of this Section for each such scenario.

3. The MACT emission limitation and requirements established shall be effective as required by, supported by information listed in §551.E and consistent with principles established in §551.E. The owner or operator shall comply with requirements in §551.G and J, and with all applicable requirements in 40 CFR part 63, subpart A.

E. Principles of Case-by-Case MACT Determinations. The following general principles shall govern preparation of each

permit application requiring a case-by-case MACT determination concerning construction or reconstruction of a major source and all subsequent review of and actions taken concerning such an application by the department:

1. the MACT emission limitation or MACT requirements recommended by the applicant and approved by the department shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source as determined by the department;

2. based upon available information, the MACT emission limitation and control technology (including any requirements under §551.E.3) recommended by the applicant and approved by the department shall achieve the maximum degree of reduction in emissions of hazardous air pollutants that can be achieved by utilizing those control technologies that can be identified from the available information, taking into consideration the costs of achieving such emission reduction, any non-air quality health and environmental impacts, and energy requirements associated with the emission reduction;

3. the applicant may recommend a specific design, equipment, work practice, operational standard, or a combination thereof. The department may approve such a standard based on these recommendations if the department specifically determines that it is not feasible to prescribe or enforce an emission limitation as defined herein; and

4. if the administrator has either proposed a relevant emission standard in accordance with section 112(d) or 112(h) of the Clean Air Act or adopted a presumptive MACT determination for the source category that includes the constructed or reconstructed major source, then the MACT requirements applied to the affected source shall have considered those MACT emission limitations and requirements of the proposed standard or presumptive MACT determination.

F. Application Requirements for Case-by-Case MACT Determination

1. The application shall specify a control technology selected by the owner or operator that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined by §551.E.

2. In the event that an affected source would require additional control technology or a change in control technology, the application for a MACT determination shall contain the following information:

a. identifying information, including company name, physical address and mailing address, facility name and address, if different from the company, a map showing the location of the facility, owner's and operator's names and agent, and telephone number and name of plant manager or contact;

b. a brief description of the major source to be constructed or reconstructed and identification of any listed source category or categories in which it is included;

c. the expected commencement date for the affected source;

d. the expected completion date for the affected source;

e. the anticipated date of start-up for the affected source;

f. the hazardous air pollutant emitted by the affected source and the estimated emission rate for each such hazardous air pollutant, to the extent this information is needed by the department to determine MACT;

g. any federally enforceable emission limitations applicable to the affected source;

h. the maximum and expected utilization of capacity of the affected source, to the extent this information is needed by the department to determine MACT;

i. the controlled emissions for the affected source in tons per year at expected and maximum utilization of capacity, to the extent this information is needed by the department to determine MACT;

j. a recommended emission limitation for the affected source consistent with the principles set forth in Subsection E of this Section;

k. the selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, and estimated control efficiency of the control technology (and the manufacturer's name, address, telephone number, and relevant specifications and drawings, if requested by the department);

l. supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology; and

m. any other relevant information required in accordance with 40 CFR part 63, subpart A.

3. In the event that an affected source will be in compliance, upon start-up, with the case-by-case MACT provisions in accordance with this Section without a change in control technology, the application for a MACT determination shall also contain documentation of the control technology in place.

G. Compliance with MACT Determination. An owner or operator of an affected source that has obtained a MACT determination shall be deemed to be in compliance with section 112(g)(2)(B) of the Clean Air Act only to the extent that the affected source is in compliance with all part 70 permit requirements. Any violation of such requirements by the owner or operator shall be deemed by the department and by EPA to be a violation of the prohibition on construction or reconstruction in section 112(g)(2)(B) for whatever period the owner or operator is determined to be in violation of such requirements, and shall subject the owner or operator to appropriate enforcement action under the Clean Air Act.

H. Requirement for Affected Source Subject to a Subsequently Promulgated MACT Standard or MACT Requirement

1. If the administrator promulgates an emission standard under section 112(d) or 112(h) of the Clean Air Act or the department issues a determination under section 112(j) of the federal Clean Air Act that is applicable to a stationary source or group of sources that would be deemed to be an affected source under this Section before the date that the owner or operator has obtained a final and legally effective MACT

determination in accordance with this Section, the owner or operator of the source(s) shall comply with the promulgated standard or determination rather than any MACT determination in accordance with this Section and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

2. If the administrator promulgates an emission standard under Section 112(d) or 112(h) of the Clean Air Act or the department makes a determination under section 112(j) of the Clean Air Act that is applicable to a stationary source or group of sources that was deemed to be an affected source under this Section and has been subject to a prior case-by-case MACT determination in accordance with this Section and the owner or operator obtained a final and legally effective case-by-case MACT determination prior to the promulgation date of such emission standard, then the department shall issue an initial operating permit that incorporates the emission standard or determination or revise the operating permit according to the reopening procedures in LAC 33:III.529, whichever is relevant, to incorporate the emission standard or determination.

a. The EPA may include in the emission standard established under section 112(d) or 112(h) of the Clean Air Act a specific compliance date for those sources that have obtained a final and legally effective MACT determination in accordance with this Section and that have submitted the information required by this Section to the EPA before the close of the public comment period for the standards established under section 112(d) of the Clean Air Act. Such date shall assure that the owner or operator shall comply with the promulgated standard as expeditiously as practicable, but not longer than eight years after such standard is promulgated. In that event, the department shall incorporate the applicable compliance date in the part 70 permit.

b. If no compliance date has been established in the promulgated 112(d) or section 112(h) standard or section 112(j) determination of the Clean Air Act, for those sources that have obtained a final and legally effective MACT determination in accordance with this Section, then the department shall establish a compliance date in the permit that assures that the owner or operator shall comply with the promulgated standard or determination as expeditiously as practicable, but not longer than eight years after such standard is promulgated or a section 112(j) determination is made.

3. Notwithstanding the requirements of §551.H.1 and 2, if the administrator promulgates an emission standard under section 112(d) or 112(h) of the Clean Air Act or the department issues a determination under section 112(j) of the Clean Air Act that is applicable to a stationary source or group of sources that was deemed to be an affected source under this Section and that is the subject of a prior case-by-case MACT determination in accordance with this Section, and the level of control required by the emission standard issued under section 112(d) or 112(h) or the determination issued under section 112(j) is less stringent than the level of control required by any emission limitation or standard in the prior MACT determination, the department is not required to incorporate any less stringent terms of the promulgated standard in the part 70 permit applicable to such source(s) and may in its

discretion consider any more stringent provisions of the prior MACT determination to be applicable legal requirements when issuing or revising such an operating permit.

I. Effective Date of MACT Determination. The effective date of a MACT determination shall be the date of issuance of a part 70 permit incorporating a MACT determination.

J. Compliance Date. On and after the date of start-up, an affected source that is subject to the requirements of this Section shall be in compliance with all applicable requirements specified in the MACT determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:

A public hearing will be held on February 27, 1998, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ168. Such comments must be received no later than March 6, 1998, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504) 765-0486.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Gus Von Bodungen  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Hazardous Air Pollutant (HAP) Control  
Technology Requirements for New Sources**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No significant effect of this proposed rule on state or local government expenditures is anticipated. The proposed rule will update state regulations to maintain equivalency with federal regulations.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No significant effect of this proposed rule on state or local governmental revenue collections is anticipated.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
This regulation would require a new major source of air toxins to install maximum achievable control technology (MACT)

upon startup. The MACT determination is to fill the gap between the startup of the facility and the promulgation of a federal MACT standard. Eventually, all facilities installing MACT due to this rulemaking would have been required to install MACT in the future. If the State fails to adopt this program, EPA will still require that these facilities do MACT. Therefore there are no additional costs or benefits to directly affected persons.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No significant effect of this proposed amendment on competition and employment is anticipated.

Gus Von Bodungen  
Assistant Secretary  
9801#044

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Air Quality and Radiation Protection  
Air Quality Division**

Refinery Vacuum Producing Systems  
Exemption (LAC 33:III.2139)(AQ167)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.2139 (AQ167).

Refinery vacuum producing systems shall be exempt from the requirements of LAC 33:III.2139 if controls are installed and maintained in accordance with a more stringent regulation. The basis and rationale for this proposed rule are to change LAC 33:III.2139 in order to eliminate unnecessary recordkeeping and reporting requirements. Facilities affected by the proposed change will comply with one set of reporting and recordkeeping requirements rather than two.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33  
ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 21. Control of Emission of Organic  
Compounds**

**Subchapter G. Petroleum Refinery Operations**

**§2139. Refinery Vacuum Producing Systems**

\* \* \*

[See Prior Text in A-B]

C. Exemptions. This Section does not apply to refinery vacuum producing systems that are required by another federal or state regulation to implement controls that reduce VOCs to a more stringent standard than would be required by this Section.

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



## NOTICE OF INTENT

### Department of Environmental Quality Office of the Secretary

Laboratory Accreditation  
(LAC 33:I.Chapters 45-57)(OS007)

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 24:

A public hearing will be held on February 27, 1998, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ167. Such comments must be received no later than March 6, 1998, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504) 765-0486.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Gus Von Bodungen  
Assistant Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Refinery Vacuum Producing Systems Exemption

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no costs or savings to state or local governmental units for this proposal.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections of state or local governmental units as a result of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Regulated facilities affected by the proposed rulemaking will have the benefit of fewer recordkeeping and reporting requirements.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This proposal will not have any known effect on competition and employment.

Gus Von Bodungen  
Assistant Secretary  
9801#043

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.Subpart 3 (OS007).

The laboratory accreditation rule will require accreditation of commercial environmental laboratories by DEQ every three years. The accreditation program will require third-party laboratory audits, submission of samples for independent analysis, and inspections of regulated laboratories. The rule will also provide for quality assurance/quality control procedures, laboratory personnel qualifications, and sampling protocol and integrity. This proposed rule and the accompanying program will enhance the accuracy, reliability, and veracity of environmental laboratory data in the state. This will help to promote and maintain public, government, and customer confidence in laboratory data in Louisiana. The program will also promote improved permitting and enforcement indirectly by promoting quality data.

The basis and rationale for this proposed rule are to implement R.S. 30:2012.D(22), which provide for the secretary to promulgate regulations for certification of commercial laboratories that provide chemical analysis, analytical results, or other appropriate test data to the department required as part of any permit application, by any order of the agency, to be included in any monitoring report submitted to the agency, or by any regulation of the agency.

The department has submitted a report to the Legislative Fiscal Office and the Joint Legislative Committee on the budget demonstrating that the environmental and public health benefits outweigh the social and economic costs reasonably expected to result from the proposed rule. This report is published in the Potpourri Section of this issue of the *Louisiana Register*.

#### Title 33 ENVIRONMENTAL QUALITY Part I. Office of the Secretary Subpart 3. Laboratory Accreditation Chapter 45. Policy and Intent §4501. Description and Intent of Program

A. These regulations provide requirements for an accreditation program specifically applicable to commercial laboratories and federal, state, and local government laboratories performing analyses reportable to the Louisiana Department of Environmental Quality (the department). The department laboratory accreditation program is designed to ensure the accuracy, precision, and reliability of the data generated, as well as the use of department-approved methodologies in the generation of that data. Laboratory data

generated by commercial environmental laboratories that are not accredited under these regulations will not be accepted by the department.

B. This accreditation covers the following fields of testing:

1. air emissions;
2. wastewater/surface water;
3. groundwater;
4. solid/hazardous wastes;
5. soils, sediments, and sludges;
6. biological materials;
7. radiologicals/radioassays; and
8. bioassays/biomonitoring/toxicological testing.

C. Each field of testing is divided into test categories. Applications for accreditation may be made for one or more test categories within specified fields of testing. To apply the laboratory must identify the specific department-approved methods it will be using for each test category and participate in all relevant department-approved proficiency testing programs. Any variance from approved protocol or procedure is acceptable only with prior written confirmation by the department.

D. Applicants must have an acceptable quality control system and associated documentation. Accreditation earned from other states or regulatory agencies may be accepted by the department, provided that a review shows that the requirements are no less stringent than those required by these regulations. Reciprocity with other state accreditation programs will be reviewed by the department, and if the requirements of these regulations are met, then accreditation may be granted.

E. This Subpart shall not apply to laboratory analyses programs accredited under the regulatory and statutory authority of the Louisiana Department of Health and Hospitals.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### §4503. Definitions

When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below:

*Accreditation*—the formal recognition by the department of a laboratory's competence wherein specific tests or types of tests can be accurately and successfully performed in compliance with all minimum requirements set forth in these regulations.

*Annual Renewal Date*—July 1.

*Applicant*—the laboratory requesting accreditation.

*Commercial Laboratory*—any laboratory that performs analyses or tests for third parties for a fee or other compensation, except those commercial laboratories accredited by the Department of Health and Hospitals in accordance with R.S. 49:1001 et seq.

*Department*—the Louisiana Department of Environmental Quality.

*Department Accreditation Program*—a program instituted by the department by which a laboratory that generates data for submittal to any area of the department may be deemed an accredited laboratory producing acceptable data, based upon the accuracy and reliability of the generated data,

the use of department-approved methodology for the generation of the data, and the utilization of an acceptable quality control/quality assurance program to document the quality of the data produced.

*Department-Approved Testing Methods*—the laboratory and field procedures that have been approved by the department. These include all EPA-recognized methods, as well as those deemed equivalent by the department, that are adopted from existing standards and regulations or developed for specific fields of testing, specific testing technologies, or specific types of tests. This refers to the methods cited in the 40 CFR and subsequent changes published in the *Federal Register* from such sources as U.S. EPA, *Standard Methods for the Examination of Water and Wastewater*, ASTM, NIOSH, SW-846, *American Public Health Association for Microbiological Methods*, USGS, AOAC, and alternate test procedures approved for use.

*Discreditation*—the revocation by the department of the formal recognition of the laboratory's accredited status because of a violation of LAC 33:I.5705.F.

*EPA*—the United States Environmental Protection Agency.

*EPA-Accepted Methods*—the methods cited in the 40 CFR and subsequent changes published in the *Federal Register*; from such sources as EPA, *Standard Methods for the Examination of Water and Wastewater*, ASTM, NIOSH, SW846, *American Public Health Association for Microbiological Methods*, USGS, AOAC, and alternate test procedures approved for nationwide use, as well as any method approved by the department.

*Field of Testing*—air emissions; wastewater/surface water; groundwater; soils, sediments, and sludges; solid/ hazardous wastes; biological materials; radiologicals/ radioassays; and bioassays/biomonitoring/toxicological testing.

*Laboratory*—any facility, whether fixed-based, mobile, or field, that analyzes environmental samples and that seeks accreditation by the department.

*Laboratory Representative*—the laboratory employee who is designated as the contact person responsible for the information provided in the application and for ensuring compliance with the requirements for accreditation.

*Mobile Laboratory*—any facility that analyzes environmental samples and that seeks accreditation by the department that is capable of moving or being moved from one site to another.

*NIST*—National Institute of Standards and Technology.

*NRC*—Nuclear Regulatory Commission.

*Pending Accreditation*—a status that exists in the accreditation process wherein all application requirements have been met by the laboratory, but formal accreditation status has not been granted by the department.

*Proficiency Evaluation Test Sample (PE)*—a sample of known composition (unknown to laboratory) provided by an external source (e.g., EPA) that is used to evaluate lab performance.

*Reaccreditation*—the reinstatement of a fully accredited status by the department, thereby signifying that all violations of LAC 33:I.5705.F that initiated the discreditation action have

been corrected and that the laboratory is deemed in compliance with requirements of these regulations.

*Reciprocity*—a method of obtaining accreditation, whereby the applicant laboratory provides documentation that demonstrates that its current certification or accreditation is no less stringent than required by these regulations. All fees associated with accreditation in the state of Louisiana shall be applicable. Laboratories located within the state of Louisiana shall be required to apply for a certification and shall not be eligible for reciprocity.

*Small Laboratory*—a laboratory consisting of 10 or fewer people who influence the quality of data from sample collection through report generation.

*Suspension*—a temporary removal by the department of the accredited status, in part or whole, of a laboratory because of an infraction(s) of LAC 33:I.5705.F until such time that the infraction(s) is satisfactorily corrected and the laboratory is returned to a fully accredited status or the infraction(s) is not corrected and the laboratory is discredited.

*Test Category*—any one of the 10 categories listed in LAC 33:I.4705.B in which a laboratory may request department accreditation for a specific test or analysis.

*Variance*—any deviation from a department-approved method that has the potential for affecting the analytical results generated from a test procedure.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

## **Chapter 47. Program Requirements**

### **§4701. Accreditation Process**

A. The department accreditation process comprises four basic steps:

1. the submittal to the department of a written request from the laboratory in the form of an application provided by the department, along with payment of all applicable fees;

2. an on-site assessment/evaluation of the laboratory submitting the request/application by authorized representatives of the department with the appropriate laboratory background;

3. the successful participation in department-approved applicable proficiency evaluations; and

4. both periodic technical evaluation of the laboratory and periodic submittal by the laboratory of written documentation that all requirements of the department accreditation program are being fulfilled in order to maintain accreditation.

B. When all requirements for accreditation have been successfully fulfilled, the department shall grant the applicant laboratory a formal notice of accreditation and a certificate of accreditation that lists those parameters for which the laboratory is accredited. The certificate of accreditation must be posted within public view in the laboratory setting.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§4703. Application for Accreditation**

A. An applicant for environmental laboratory accreditation must be legally identifiable and possess a permanent business

address and telephone number. The applicant laboratory must have the staff and resources in order to satisfactorily accomplish those analyses/tests for which accreditation is requested.

B. An application for environmental laboratory accreditation shall be made in writing to the department. This application will provide all requested information and be accompanied by the appropriate application fee. Information will include at least one round of the most recent department-specified proficiency evaluation test results or an analytical data package for test categories where no accessible proficiency tests exist. Supplemental information may be required.

C. Laboratories maintained on separate premises, even though operated under the same management, shall be required to maintain distinct accreditation. If a laboratory is located outside of the state of Louisiana, it shall be considered a separate and distinct laboratory and shall require individual accreditation. Separate accreditation is not required for buildings on the same or adjoining grounds. If a mobile laboratory is operating independently within the state, separate accreditation may be necessary.

D. Each laboratory must identify an official to represent it in all matters related to attaining and maintaining environmental laboratory accreditation. This official is the point of contact with the laboratory and is known as the laboratory representative. The laboratory representative may be any senior person from either the technical or managerial staff. The laboratory representative should be in a position of authority to ensure that the laboratory complies with the criteria and conditions for accreditation and should have the authority to bind the company in a legal manner.

E. In cases where all application requirements have been met, including review of all methodology and quality assurance program data, a special status of "pending accreditation" may be granted at the discretion of the department. Before a laboratory is granted full accreditation, all requirements of these regulations must be met.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§4705. Categories of Accreditation**

A. At the time of application each applicant must clearly identify both the fields of testing and the test categories for which accreditation is sought. A copy of the relevant test method documentation and the requisite equipment for the method must be available at the laboratory. A current list of approved methodologies for each parameter/analyte will be maintained by the department accreditation office, and a copy of the list will become a part of the application package. In cases where the methodology used by the laboratory is not listed, the laboratory shall submit documentation that will verify that the results obtained from the method in use are equal to or better than those results obtained from the approved methodology. The department will review the data submitted by the laboratory and will notify the laboratory in writing within 60 calendar days if the method is acceptable or unacceptable as an alternate method of analysis.

B. A laboratory may apply for accreditation in any one or more of the eight fields of testing (e.g., air emissions, wastewater/surface water, etc.) and in one or more of the 10 test categories applicable to the field(s) of testing selected. The laboratory shall be accredited in those parameters within the test category(ies) for which the laboratory demonstrates acceptable performance on proficiency samples (when available) and meets all other requirements of the department accreditation program. The accreditation test categories are as follows:

1. metals;
2. air pollutants (including industrial hygiene and Toxic Organic Compounds (T.O.) methods);
3. nutrients, minerals, ions, demands, classical wet chemistry, and total and fecal coliform;
4. microbiology (including fecal coliform and total coliform);
5. bioassay and biomonitoring;
6. organics (including volatiles, semi-volatiles, pesticides, herbicides, and PCBs);
7. dioxins and furans;
8. radiochemistry and radio assay;
9. asbestos; and
10. minor conventional parameters-BOD<sub>5</sub>, oil and grease, TSS, pH, fecal and total coliform, and residual chlorine.

C. An accredited laboratory may request the addition of field(s) of testing and test category(ies) to its scope of accreditation at any time. Such a request must be submitted in writing to the department. Unless the previous on-site inspection can verify the competence of the laboratory to perform the additional tests, another on-site inspection may be required.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

**§4707. Fees**

A. Testing laboratories applying for accreditation or renewal of accreditation shall submit the appropriate fee calculated from the fee schedule along with the required application or update materials. Fees are nonrefundable. Fees are based on test categories and not the fields of testing.

B. In-house laboratories owned and/or operated by the state, local, or federal government are exempt from the fee requirements paid to the department, but shall make appropriate application for accreditation in accordance with other provisions of these regulations. Required proficiency samples shall be purchased by the laboratory and the required third-party audit shall be billed directly to the laboratory.

C. The annual fees shall not be prorated and shall apply in full to any portion of the fiscal year that remains prior to the annual renewal date (July 1).

D. The following basic fee structure will be used in determining the initial or annual fees due to the department:

Accreditation application fee payable every three years	\$500
Per major test category payable every year	\$250
Minor conventional category payable every year	\$200

Annual surveillance and evaluation applicable to minor conventional facilities and facilities applying for only one category of accreditation	\$250
Proficiency samples biannually	to be purchased by the laboratory
Bioassay/biomonitoring annually	to be purchased by the laboratory
Third-party audit	to be billed directly to the laboratory

E. Additional fees may be charged for the expansion of accreditation to include new test categories. Fees must be received prior to granting accreditation. Fee assessment will depend on the category(ies) of analyses and the need for a supplemental on-site inspection.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

**§4709. Inspection of Laboratory**

A. As a condition of obtaining and maintaining accreditation, a laboratory shall permit and facilitate inspections by personnel or designated representatives of the department. The specific requirements of an on-site inspection are outlined in LAC 33:I.Chapter 51.

B. Inspectors shall conform to appropriate safety procedures during an on-site inspection. The authorized representatives of the department who perform the on-site evaluation must be experienced professionals and hold at least a bachelor's degree in a science-related field with technical experience in a laboratory. The representative(s) must successfully complete a laboratory certification course presented by the United States Environmental Protection Agency, the National Institute of Standards and Technology, or other department-approved training group.

C. Regular inspections of accredited laboratories shall be conducted at intervals of not more than two years. Such inspections shall be conducted by representatives of the department upon presentation of credentials. Prior to granting initial accreditation and after all documentation provided to the department has been reviewed, an announced on-site laboratory inspection shall be performed.

D. Inspections may include on-site proficiency test sample(s) analyses but shall not exceed 10 percent of the test category(ies). If there is a cost for these samples, the department will bill the laboratory, and the laboratory shall remit within 30 calendar days.

E. Laboratories that utilize mobile and/or field laboratories shall not be required to certify each laboratory individually. The mobile and/or field facilities shall be considered a part of the fixed-based laboratory and shall be required to participate in performance evaluation studies. Mobile and/or field laboratories shall not be exempt from any applicable requirements of an on-site evaluation as outlined in LAC 33:I.Chapter 51. Mobile and/or field laboratories may be inspected at the discretion of the department. In the event an organization is composed entirely of mobile and/or field laboratories and no fixed-based laboratory exists, the business

address of the organization shall be utilized as the location for accreditation purposes.

F. Fixed-base laboratories that have moved to a new location shall be inspected within 30 calendar days after the laboratory has notified the department, in writing, of such change in location as required in LAC 33:I.5707.

G. The department shall reserve the right to inspect or observe the testing procedure(s) of the laboratory if such action is deemed necessary by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

#### **§4711. Proficiency Testing Participation**

A. All accredited environmental laboratories or laboratories seeking accreditation must participate in department-approved proficiency testing programs relevant to their scope of accreditation, except when determined by the department that an appropriate proficiency test is not accessible or readily available. The department may provide appropriate commercial test samples at the applicant's expense whenever necessary.

B. If proficiency test samples are not available for particular test categories, the laboratory requesting accreditation will submit an "analytical data package." An "analytical data package" shall include all relevant analytical methodology, technical information, and quality assurance results concerning a particular type of analysis for which there is no current proficiency testing program.

C. Department-approved proficiency tests shall be used to provide suitable evidence of laboratory proficiency.

D. Proficiency testing studies will be available at a minimum of every six months. Laboratories may set up round robin testing programs under the department's supervision in order to satisfy this requirement, where appropriate.

E. Laboratories shall satisfactorily analyze at least one of the two proficiency test studies offered per year for each test category accredited. A year shall be considered as the 12-month period from the first day of July until the last day of June. Results shall be considered satisfactory when they are within the acceptable limits established by the testing agency or the department.

F. Each participating laboratory must supply the department with a copy of the proficiency evaluation (PE) test results within 30 days of receipt by the laboratory. Every laboratory that receives test results that are "unacceptable" for a specific analyte must investigate and identify likely causes for these results, resolve any problems, and report such activity to the department along with the submittal of test results.

G. In cases of on-site proficiency testing, the department shall inform the laboratory of the results of the evaluation. The department may require the laboratory to analyze additional proficiency samples if the results of such test are "unacceptable."

H. Results of proficiency testing during the preceding 12 months shall be made available by the laboratory, upon request, to any person utilizing or requesting the services of the laboratory.

I. Accredited laboratories that desire to extend the range of tests or analyses offered shall submit a written request with the appropriate fees, shall comply with the requirements of these regulations, and shall demonstrate satisfactory results in at least one round of proficiency testing samples prior to receiving accreditation.

J. Laboratories shall bear the cost of any subscription(s) to a proficiency testing program required by the department for compliance purposes.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

#### **§4713. Interim Acceptance of Accreditation by Another Accrediting Authority for In-State Laboratories**

A. Acceptance of accreditation from another accrediting authority as equivalent accreditation shall be determined by the department.

B. All of the following requirements must be fulfilled:

1. a completed application form and support documents submitted;
2. any appropriate fee(s) paid;
3. evidence of successful participation in a proficiency testing program or its equivalent;
4. written documentation of accreditation sent to the department;
5. a comparison of certification requirements from the accredited laboratory; and
6. an on-site evaluation/inspection conducted by authorized representatives of the department or the previous inspection conducted by the accrediting authority.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

#### **§4715. Accreditation for Laboratories not Located in Louisiana**

A. Out-of-state laboratories may receive accreditation via two mechanisms:

1. direct application to the department based on the requirements of this program; or
2. reciprocity based on evaluation of current accreditation maintained. Reciprocal accreditation is based on meeting the requirements set forth in LAC 33:I.4713.

B. A testing laboratory located outside of Louisiana may receive accreditation from the department or from another agency having environmental regulatory responsibility or delegated administrative authority, if approved by the department. The laboratory shall comply with all documentation and fee requests from the department.

C. If the out-of-state laboratory's accreditation is revoked, the Louisiana authorization is thereby automatically canceled. The environmental representative shall notify the state and all clients in Louisiana that utilize the laboratory of the revocation within 10 calendar days.

D. When accreditation of the laboratory has been reinstated, the department will request adequate documentation from the laboratory indicating that the laboratory is in compliance with these regulations. The

following requirements must be fulfilled before the department reinstates the laboratory as accredited:

1. a completed application form and support documents submitted;
2. fee(s) paid in accordance with LAC 33:I.4707;
3. evidence of successful participation in a proficiency testing program or its equivalent;
4. written documentation of accreditation sent to the department; and
5. an on-site evaluation/inspection conducted by authorized representatives of the department.

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HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

#### **§4717. Accreditation for Laboratories Participating in the NELAP Certification Program**

In-state laboratories participating in the National Environmental Laboratory Accreditation Program (NELAP) shall be certified under standards established by these regulations and those of the NELAP program as found at <http://134.67.104.12/html/nelac/standards.htm> or by writing NELAP, U.S. Environmental Protection Agency (MD-75A), Research Triangle Park, NC 27711, attention: NELAC Director, telephone (919) 541-1120. NELAP-certified laboratories shall be required to meet the requirements for reciprocity as set forth in LAC:33:I.4713.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

#### **§4719. Implementation**

A. All commercial laboratories analyzing data as of the effective date of these regulations that are directly or indirectly submitting data to the department must submit an application for accreditation as required in LAC 33:I.4701.A.1, including the review fee, within 180 days of the effective date of these regulations. The department will not accept laboratory data generated by laboratories that do not comply with this deadline until such laboratories receive accreditation and fully comply with the requirements of this Section.

B. All laboratories subject to these regulations must receive accreditation from the department, as provided in these regulations, undergo an on-site inspection as specified in LAC 33:I.4701.A.2, and successfully participate in proficiency evaluations as required in LAC 33:I.4701.A.3 within one year of the effective date of these regulations. The department will not accept data generated by laboratories that do not comply with this deadline until such laboratories receive accreditation and fully comply with the requirements of this Section.

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HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

## **Chapter 49. Organization and Personnel Requirements**

### **§4901. Laboratory Staff for All Programs Covered by these Regulations**

A. **Managerial Staff.** The laboratory shall have the managerial staff with the authority and resources needed to discharge their duties. The laboratory shall be organized in such a way that confidence in its independence of judgment and integrity is maintained at all times. The laboratory shall specify and document the responsibility, authority, and interrelation of all personnel who manage, perform, or verify work affecting the quality of calibrations and tests. Such documentation shall include:

1. a clear description of the lines of responsibility in the laboratory;
2. personnel proportioned such that adequate supervision is ensured. An organizational chart is recommended; and
3. job descriptions for all positions.

#### **B. Laboratory Technical Director**

1. **Academic Training.** The laboratory technical director must have a bachelor's degree in science or a minimum of four year's equivalent experience in a related field.
2. **Experience.** The laboratory technical director must have a minimum of two year's experience in the area of environmental analysis.

#### **C. Quality Assurance Manager**

1. **Academic Training.** The quality assurance manager must have a minimum of a bachelor's degree in science or four year's equivalent experience in a related field.
2. **Experience.** The quality assurance manager must have a minimum of two year's environmental laboratory experience.
3. **Reporting Authority.** The quality assurance manager must have direct access to the highest level of management for decisions regarding laboratory quality assurance policy and resources. He or she must have independent authority regarding quality assurance oversight and implementation of the quality assurance program. This organizational position must not report through the technical management of the laboratory. The quality assurance manager must have the opportunity and freedom to evaluate data objectively without influence from technical or financial management.
4. **Technical Knowledge.** The quality assurance manager must have a general knowledge of all analytical methods that are performed by the laboratory.

5. **Small Laboratories.** In smaller laboratories (staff less than 10 total employees), the quality assurance manager's responsibilities may be performed by an upper level technical or operational manager of the facility. Academic and experience requirements apply.

#### **D. Supervisors**

1. **Academic Training.** Supervisors must have a minimum of a bachelor's degree or a minimum of four year's experience in a related field.

2. Experience. Supervisors must have a minimum of one year of experience in the area to be supervised, preferably with a minimum of six month's supervisory experience.

3. Radiochemistry. If the individual is supervisor of a radiochemistry laboratory, the individual must have a minimum of four year's experience in the field/area of radiochemistry; however, each year of additional college-level training in related fields may substitute for one year of experience, up to a maximum of two years.

#### E. Instrument Operators

1. Academic Training. Instrument operators must have a minimum of a high school diploma or equivalent and satisfactory completion of a short course or structured in-house equivalent on the operation of the instrument (by equipment manufacturer, professional organization, university, or other qualified training facility).

2. Experience. Instrument operators must have a minimum of six month's experience in the operation of the instrument with documentation that acceptable results are achieved by the operator (performance evaluation and quality control samples successfully analyzed).

3. On-the-Job Training. During on-the-job training to fulfill the requirement for experience, the data produced by the operator shall be deemed acceptable when validated and reviewed by a qualified instrument operator and/or laboratory supervisor.

#### F. Analyst

##### 1. Chemistry Procedures

a. Academic Training. An analyst must have a minimum of a high school diploma or equivalent, plus proper training in a methods training course or by a qualified analyst.

b. Experience. An analyst must have a minimum of six month's laboratory experience with the analysis procedure(s) with documentation that acceptable results are achieved by the analyst (performance evaluation and quality control samples successfully analyzed).

c. On-the-Job Training. During on-the-job training to fulfill the requirement for experience, data produced by the analyst shall be deemed acceptable when validated and reviewed by a qualified analyst and/or laboratory supervisor.

##### 2. Microbiological Procedures

a. Academic Training. An analyst must have a minimum of a bachelor's degree in science or four year's experience in a related field. He or she must have training in water analyses for total coliform and fecal coliform, a minimum of a high school diploma, or the equivalent, and satisfactory completion of a short course or structured in-house equivalent on the proper techniques of analysis.

b. Experience. An analyst must have a minimum of six month's experience in microbiological analysis and techniques.

##### 3. Radiological Procedures (Gross Alpha, Gross Beta, and Specific Radionuclides)

a. Academic Training. An analyst must have a minimum of a high school diploma or equivalent, plus specialized training in standards and sample preparation, instrument calibration, calculations, and data handling.

b. Experience. An analyst must have a minimum of six months of on-the-job training. An analyst may assist in routine

sample preparation and radioanalytical procedures provided that the work is supervised and validated by a qualified analyst and/or laboratory supervisor.

#### 4. Biomonitoring Procedures

a. Academic Training. An analyst must have a minimum of a high school diploma, or the equivalent, and documented training by a qualified analyst. EPA video training tapes should be utilized where available.

b. Experience. An analyst must have six months of on-the-job training with documentation of acceptable results from standard reference toxicant tests performed by the analyst.

c. On-the-Job Training. During on-the-job training to fulfill the requirements for experience, data produced by the analyst shall be deemed acceptable when validated and reviewed by a qualified analyst and/or laboratory supervisor.

G. Information on the relevant qualifications, training, and experience of the technical staff shall be maintained by the laboratory.

H. The laboratory shall provide additional training as needed in order to keep personnel current with new procedures, changes in existing procedures, and/or equipment changes or improvements.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **Chapter 51. On-site Inspection/Evaluation**

#### **§5101. Inspection Procedures**

A. The authorized representative(s) of the department shall schedule the initial on-site inspection with the applicant laboratory. The authorized representative(s) of the department may make an announced or unannounced inspection or examination of an accredited laboratory whenever the department, in its discretion, considers such an inspection or examination necessary to determine the extent of the laboratory's compliance with the conditions of its accreditation and these regulations. Any refusal to allow entry to this representative shall constitute a violation of a condition of accreditation and is grounds for discreditation. The laboratory shall provide appropriate safety equipment for the department representative(s) when required.

B. Additional inspections may be conducted when evaluations and submissions from the laboratory or its clients indicate significant technical changes in the capability of the laboratory have occurred.

C. The following shall be available for review at the laboratory:

1. quality assurance plan;
2. approved methodology manual;
3. quality assurance data; and
4. proficiency test data.

D. During inspections, consideration will be given to:

1. competence of the staff;
2. working conditions, including adequacy of space;
3. lighting, equipment, and supplies;
4. efficient organization of the laboratory;
5. testing or analytical methods used;
6. quality control procedures;
7. maintenance of all required records; and

8. compliance with all the requirements of these regulations.

E. Laboratory inspection will follow this general outline:

1. an entry briefing with laboratory management;
2. review of quality documentation, sample handling, and records, such as typical lab results and reports of test data;
3. interviews with technical staff;
4. demonstration of selected tests, as necessary;
5. examination of equipment and calibration records;
6. an exit briefing including the specific identification of any deficiencies; and
7. a written report of inspection findings to be forwarded to the laboratory within 60 working days after the on-site visit.

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HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§5103. Laboratory Facilities**

A. The laboratory conditions in which the tests are undertaken shall not invalidate the test results or adversely affect the required accuracy of measurement. The laboratory shall have the equipment and energy sources needed for proper testing. They shall be equipped with devices to monitor essential environmental conditions. Specifically, the testing laboratory shall include the following:

1. adequate work space, ventilation, light, and access to stable power sources at work stations;
2. exhaust hoods for proper elimination of volatile materials;
3. contamination-free work areas as necessary;
4. chemical and sample handling areas that will provide safe working areas and prevent cross contamination of samples;
5. adequate storage facilities for samples, extracts, reagents, solvents, reference materials, and standards to preserve their identity, concentration, purity, and stability;
6. adequate procedures and facilities in place for collection, storage, and disposal of wastes;
7. where relevant, adequate procedures and facilities for handling materials that may transmit infectious agents and radioactive materials;
8. appropriate storage for volatile, corrosive, or explosive chemicals and flammable solvents;
9. adequate separation of activities to ensure that no activity has an adverse effect on analyses;
10. separate culturing and testing facilities for biomonitoring laboratories; and
11. counting rooms that are physically separated from other activities in radiological laboratories.

B. Access to and use of all test areas shall be regulated in a manner appropriate to their designated purpose, and entry by persons external to the laboratory shall be controlled.

C. Adequate measures shall be taken to ensure cleanliness in the testing laboratory.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§5105. Test Methods and Procedures**

A. The testing laboratory shall have adequately documented instructions on the use and operation of all relevant equipment, on the handling and preparation of test items, where applicable, and on standard testing techniques, where the absence of such instructions could jeopardize the efficiency of the testing process. All instructions, standards, manuals, and reference data relevant to the work of the testing laboratory shall be maintained up-to-date and be readily available to the staff.

B. The testing laboratory shall use department-approved methodologies. These methodologies shall be available to the staff performing the tests.

1. Any variance from department-approved methodology is acceptable with prior written confirmation by the department. When an approved method or an appropriate modification is not available, the data may be accepted when submitted with the method validation package that must include, at a minimum, the requirements found in Subsection B.2 of this Section.

2. Where it is necessary to deviate from department-approved methods, a method validation package shall be submitted. This validation package must include, at a minimum, the following:

- a. origin of method;
- b. deviations from standard;
- c. reason for deviations;
- d. effects of deviations; and
- e. comparison with the department-approved methods

replaced, with documentation indicating results achieved from the modified method are equal to or better than the original method.

C. Any federal and/or state regulations applicable to the request for alternate methodology shall have priority over these regulations, and shall be utilized in the assessment of the request.

D. The testing laboratory shall have implemented the written standard operating procedures (SOPs), which shall be available to the staff and the inspector.

E. The testing laboratory shall have an acceptable and written quality assurance program plan that is implemented by the staff and readily available to the inspector.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§5107. Deficiencies Identified During On-Site Inspection**

A. Whenever deviations or deficiencies are found during an inspection, documentation of same will be included in the written report as required in LAC 33:I.5101.E.7. The laboratory representatives (or designees) will be asked to attest to (sign) receipt of the on-site inspection form and review same with the representative of the department conducting the inspection. The laboratory shall have a period of 30 calendar days from date of receipt of the laboratory inspection report in which to respond to the deficiencies reported and submit a plan for correcting all identified deficiencies. If the laboratory fails to respond, the accreditation process will terminate and the laboratory will be considered as nonaccredited.



B. The laboratory shall correct any deficiencies or deviations within six months from the date of receipt of the inspection report. If deficiencies affecting the accuracy of results are found, the accreditation shall be immediately suspended or revoked.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

#### **§5109. Report of On-Site Inspection**

A. The department shall prepare for each accredited laboratory a listing of the test categories for which the laboratory has demonstrated proficiency during inspections. Inspection reports and listings shall be deemed public records. The department shall prepare a certificate of accreditation identifying the test categories for which the laboratory has been approved.

B. Whenever an accredited laboratory completes the requirements for increasing the scope of accredited analyses performed, another on-site inspection may be required, unless the previous annual on-site inspection verifies the competency of the laboratory to perform the additional tests.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

#### **§5111. Laboratory Safety Program**

While specific safety criteria are not an aspect of laboratory accreditation, laboratory personnel should apply general and customary safety practices as part of good laboratory procedures. Each laboratory is strongly encouraged to have a written safety plan as part of their standard operating procedures. However, when safety practices are included in any approved method, those procedures become mandatory and must be strictly followed.

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HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **Chapter 53. Quality System Requirements**

#### **§5301. Quality Assurance/Quality Control Requirements**

A. Each laboratory seeking accreditation shall:

1. have documented quality control procedures in use for each analytical procedure;
2. comply with all quality control procedures required by applicable federal, state, or public health agencies when performing analyses; and
3. have procedures to be followed for feedback and corrective action whenever testing discrepancies are detected or departures from documented policies and procedures occur.

B. The laboratory shall operate an internal quality assurance program appropriate to the type, range, and volume of work performed. A person/persons having responsibility for quality assurance within the laboratory shall be designated by the laboratory management and have direct access to top management.

C. The quality assurance program shall be documented in a quality assurance manual that is available for use by the laboratory staff. The quality assurance manual shall be

maintained by the quality assurance manager. The quality assurance manual shall contain information regarding:

1. the structure of the laboratory (organizational charts and generic position descriptions);
2. the operational and functional duties and services pertaining to quality assurance, so that each person concerned knows the extent and the limits of his/her responsibility;
3. general quality assurance procedures;
4. procedures for feedback and corrective action whenever testing discrepancies are detected;
5. chain of custody procedures;
6. a quality policy statement, including objectives and commitments, by management;
7. references to procedures for the control and maintenance of documentation, including document control of laboratory notebooks, instrument logbooks, standards logbooks, and records for data reduction, validation, storage, and reporting;
8. the laboratory's procedures for achieving traceability of measurements;
9. the laboratory's scope of tests;
10. references to procedures for handling submitted samples;
11. references to major equipment, as well as the facilities and services used by the laboratory;
12. references to procedures for calibration, verification, and maintenance of equipment;
13. references to verification practices including interlaboratory comparisons, proficiency testing programs, use of reference materials, and internal quality control schemes;
14. the laboratory management arrangements for departures from documented policies and procedures or from standard specifications;
15. references to procedures for dealing with complaints;
16. references to procedures for protecting confidentiality and proprietary rights;
17. references to procedures for audit and review; and
18. references to processes/procedures for establishing that personnel are adequately experienced in the duties they are expected to carry out and/or receive any needed training.

D. The quality assurance system shall be reviewed annually by management to ensure its continued effectiveness. Such reviews shall be documented with details of any changes.

E. Standard operating procedures (SOPs) shall be kept in a manual available to the analyst and the inspector. SOPs may be included as a part or section of the laboratory's quality assurance manual. The laboratory shall have clearly defined, written SOPs or an equivalent, addressing, at a minimum, and as appropriate:

1. methods of analysis;
2. sample collection, preservation, storage, handling, and chain of custody;
3. procurement and inventory procedures;
4. preventive maintenance;
5. recordkeeping and record storage (archives);
6. data reduction, validation, and reporting;
7. correcting erroneous reports;

8. management of laboratory wastes and hazardous materials; and

9. complaints registered against the laboratory's testing procedures, reporting procedures, and/or other general operating procedures.

F. Supervisory staff shall be responsible for quality assurance/quality control implementation and compliance.

G. The following general quality control principles shall apply, where applicable, to all testing laboratories. The manner in which they are implemented is dependent on the types of tests performed by the laboratory (e.g., chemical, microbiological, radiological). The standards for any given test type shall assure that the following applicable principles are addressed:

1. all laboratories shall have protocols in place to monitor the following quality controls:

a. adequate controls to monitor tests such as blanks, spikes, or reference toxicants;

b. adequate tests to define the variability and/or reproducibility of the laboratory results such as duplicates;

c. measures to ensure the accuracy of the test data, including sufficient calibration and/or continuing calibrations, use of certified reference materials, proficiency test samples, or other measures;

d. measures to evaluate test performance, such as method detection limits, or range of applicability such as linearity;

e. selection of appropriate formulae to reduce raw data to final results such as linear regression, internal standards, or statistical packages;

f. selection and use of reagents and standards of appropriate quality; and

g. measures to assure constant and consistent test conditions (both instrumental and environmental) where required by the method, such as temperature, humidity, light, or specific instrument conditions;

2. all quality control measures shall be assessed and evaluated on an ongoing basis, and quality control acceptance limits shall be used to determine the validity of the data. The acceptance/rejection criteria shall be updated at a frequency established by the method or by the department's standards;

3. the laboratory shall have procedures for the development of acceptance/rejection criteria where no method or regulatory criteria exists; and

4. the method-specified and/or method-recommended quality control protocols shall be followed. The essential standards shall be used if no protocols are written into the method or if the method protocols are less stringent.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§5303. Equipment and Supplies**

A. The laboratory shall be furnished with or have access to all items of equipment required for correct performance of the analytical procedures for which it is accredited.

B. All equipment shall be properly maintained. Maintenance shall be documented.

C. Defective equipment shall be removed from service and labeled until it has been repaired and shown to function satisfactorily.

D. Maintenance log book(s) shall be maintained for all major equipment. Each log shall include:

1. the name of the item of equipment;

2. the manufacturer's name, type identification, and serial number;

3. the date received and the date placed in service;

4. the condition of equipment when placed in service (new, used, or reconditioned);

5. the current location;

6. the location of manufacturer's instruction manual (if available); and

7. the details of maintenance.

E. In the case of measuring equipment, calibration records shall be maintained.

F. Records shall be maintained for acquisition of all equipment, reagents, and support services utilized by the laboratory in the generation of analytical data.

G. Supplies used for environmental testing shall meet the following minimums:

1. analytical reagents:

a. analytical reagent grade (AR) chemicals or equivalent are acceptable, unless individual procedures specify other reagent requirements;

b. stock and working standard solutions shall be checked regularly for signs of decomposition and expiration;

c. all solutions shall be labeled with identification of the compound, concentration, date prepared, analyst who prepared solution, and expiration date;

d. all purchased chemicals, solutions, and standards shall be labeled with dates of receipt, the dates of expiration on the container, and the date when the container is opened;

e. when reagents are removed from a container, they shall be used entirely or the unused portion discarded. Unused portions of a reagent may not be returned to the original container; and

f. compressed gases shall be of commercial grade, unless individual procedures specify other requirements.

2. glassware shall be cleaned and maintained properly as required by the test methodology; and

3. thermometers:

a. the laboratory shall have access to a NIST (National Institute of Standards and Technology) traceable thermometer where applicable;

b. the calibration of working thermometers, with the exception of dial thermometers, shall be checked at least annually against a NIST traceable certified thermometer and results recorded and documented per thermometer;

c. the calibration of dial-type thermometers shall be checked at least quarterly against a NIST traceable thermometer and results recorded per thermometer; and

d. thermometers shall be labeled when calibrated and the correction factor recorded.

H. Equipment used for environmental testing shall meet the following minimums:

1. analytical balances/pan balances:

a. records of balance calibration shall be kept for at least two ranges with Class S or S-1 reference weights (weights should be recertified every two years). Records showing daily (or before each use) functional/calibration checks for analytical balances and monthly functional/calibration checks for pan balances shall be maintained;

b. balances shall be calibrated and serviced at a minimum of once per year and service date recorded on the balance; and

c. balances may only be used with suitable support;

2. pH meters:

a. the laboratory shall use a pH meter with appropriate electrode with scale graduations at least 0.1 pH units (calibrated to  $\pm 0.1$  pH units for each use period) with temperature correction;

b. either a thermometer or a temperature sensor for automatic compensation shall be in use;

c. records shall be maintained indicating calibration daily or before each use, whichever is less frequent; and

d. aliquots of standard pH 4 and pH 7 or pH 7 and pH 10 shall be used only once;

3. conductivity meter:

a. a conductivity meter and probe of sufficient sensitivity shall be in use;

b. records shall be kept to show a daily or before each use calibration check, whichever is less frequent. Calibration shall be within the range of interest using standard solutions; and

c. records shall be kept showing that the cell constant is determined annually;

4. refrigeration equipment:

a. thermometer(s) in each refrigerator shall be immersed in liquid to the appropriate immersion line;

b. thermometers shall be graduated in increments no larger than 1°C;

c. temperatures for each refrigerator shall be recorded for each day in use for laboratory activities;

d. samples shall be stored in separate refrigerators from all standards where a potential for cross-contamination exists; and

e. refrigerator temperature should be maintained at  $4\text{EC} \pm 2\text{EC}$  and freezer temperature shall be less than 0EC;

5. visual comparison devices:

a. visual devices shall be calibrated according to manufacturer's specifications and/or test methodologies; and

b. results shall be recorded and maintained; and

6. Ovens/incubators/baths:

a. temperature shall be adequately controlled; and

b. records shall be kept to show that temperature is maintained (e.g., beginning and end of each use cycle or daily for extended drying periods).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### §5305. Calibration

A. Measuring and testing equipment used by the testing laboratory shall be calibrated, where appropriate, before being

put into service and thereafter according to an established program.

B. The overall program of calibration of equipment shall be designed and operated so as to ensure that measurements made in the testing laboratory are traceable (where the concept is applicable) to national standards of measurement and, where available, to international standards of measurement specified by the International Committee of Weights and Measures. Where the concept of traceability to national or international standards of measurement is not applicable, the testing laboratory shall provide satisfactory evidence of correlation or accuracy of test results (e.g., by participation in a suitable program of interlaboratory comparisons).

C. The laboratory shall record all calibration data including frequency, conditions, and standards used for all analytical methodology.

D. The laboratory shall verify and document all standards versus primary (reference) standards.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### §5307. Test Methods and Procedures

A. The laboratory shall have procedures for making and controlling revisions to in-house SOPs, using revised SOPs only after written authorization from the designated laboratory authority.

B. Quality control procedures shall be documented and available to the staff as required in LAC 33:I.5301.C.

C. All manual calculation and data transfers shall be subject to appropriate checks.

1. When manual calculations are checked by a supervisor or another analyst, the results shall be initialed and dated on the work sheet by the individual who verified the results.

2. Where results are derived by electronic data processing techniques, the stability of the system shall be such that the accuracy of the results is not affected. This generally implies an ability to detect malfunctions in the hardware during program execution and take appropriate corrective action. Adherence to good automated laboratory practices (GALP) is recommended; however, at a minimum the laboratory must comply with the following:

a. computer software must be appropriate for the intended use;

b. procedures must be established and implemented for the protection of the integrity of data. Such procedures shall include:

i. integrity of data entry or capture;

ii. data storage;

iii. data transmission; and

iv. data processing;

c. computer and automated equipment must be provided with acceptable environmental operating conditions in order to maintain the operating integrity of the system; and

d. appropriate procedures must be implemented in order to maintain the security of data. These procedures must include prevention of unauthorized access to computer records

and prevention of unauthorized amendments or changes to computer records.

D. Whenever samples are subcontracted to another environmental testing laboratory, the original laboratory shall maintain a verifiable copy of results with a chain of custody. This procedure may not be used to circumvent proper accreditation or any state requirements. The original laboratory is responsible for ensuring that the secondary laboratory used is properly accredited for the scope of testing performed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§5309. Radiochemistry and Radionuclide Assay**

A. General Requirements. Radiochemistry and radionuclide assay laboratories shall be subject to the requirements set forth throughout these regulations and to those specific requirements established in this Section. These are minimum specifications, and more stringent criteria may be utilized.

#### B. Quality Control Practices

1. The laboratory shall continually evaluate its performance for each method and matrix that includes the determination of accuracy and precision.

2. Supervisory personnel shall conduct a documented review of the data calculations and quality control (QC) results.

3. Deviations or deficiencies shall be reported to management and documented. QC data shall be retrievable for all analyses.

4. Method detection limits shall be determined and documented. Confirmation of detection limits shall be done yearly or as required by the method.

#### C. Quality Assurance Checks

1. Radiochemistry and Radionuclide Assay. Ten percent of all analyses shall be QC, unless otherwise specified by the specific method. A minimum of three QC samples should be performed for each batch. The lab should repeat all samples if the QC check standard is outside the 95 percent confidence interval ( $\pm$  two standard deviations). Samples should be performed as follows:

a. QC samples should include one spike in 10 or one spike per batch if less than 10;

b. QC samples should include one blank in 10 or one blank per batch if less than 10;

c. QC samples should include one duplicate or spiked duplicate in 20 or one duplicate per batch if less than 20; and

d. spike samples should be representative of specified regulatory limits and/or they should approach the method-specific minimum detectable activities or lower limit of detections.

2. Radionuclide Assay Other than Radiochemistry. Twenty percent of all analyses shall be QC, unless otherwise specified by the method. A minimum of three QC samples should be performed for each batch. The lab should repeat all samples if the QC check standard is outside the 95 percent confidence interval  $\pm$  two standard deviations. Samples should be performed as follows:

a. QC samples should include one spike in 20 or one spike per batch if less than 20;

b. QC samples should include one blank in 20 or one blank per batch if less than 20;

c. QC samples should include one duplicate or spiked duplicate in 20 or one duplicate or spiked duplicate per batch if less than 20;

d. spike samples should be representative of specified regulatory limits and/or they should approach the method-specific minimum detectable activities or lower limit of detections; and

e. standard NIST traceable sources may be substituted for spike analysis.

#### D. General Equipment and Supplies

##### 1. Supplies

a. Distilled and/or deionized water shall be demonstrated to be free of interferants at applicable detection limits. This may be accomplished through the use of blanks.

b. Analytical reagents shall be demonstrated to be free of interferants at applicable detection limits. This may be accomplished through the use of blanks.

c. Reference sources should be traceable to NIST or an equivalent and shall be replaced after an appropriate period of time, not to exceed five half-lives of a single nuclide or, in the case of mixed nuclide standards, they should be replaced after they have been determined to be unusable. Unusable is determined by the inability to meet calibration criteria as set forth by the method or technical manual.

##### 2. Equipment—Auto Pipetors/Diluters

a. Apparatus having sufficient sensitivity for the application shall be used.

b. Records shall be kept showing delivery volumes are checked periodically.

c. Laboratory technicians shall periodically demonstrate the ability to properly use the equipment. This shall be documented.

E. Analytical Instrumentation. Maintenance log book(s) shall be maintained on all instrumentation or measuring devices. Each log shall include:

1. information as set forth in LAC 33:I.5303.D;

2. calibration frequency;

3. standards used for calibration;

4. calibration history;

5. the authorized calibration personnel or institute; and

6. records of all maintenance performed.

F. Environmental Testing Equipment. Equipment used for environmental testing shall meet the following minimums:

1. low background alpha/beta counting systems:

a. the systems shall be calibrated at least yearly;

b. the systems shall be calibrated in accordance with the appropriate methodologies or their appropriate technical manual;

c. attenuation curves shall be developed for appropriate alpha/beta energies that best represent the energies of the radionuclide of concern;

d. voltage plateaus shall be performed yearly, whenever counting gas has been changed, or if major maintenance is performed to the system. If the voltage plateau

changes by more than 50 volts, the calibration curves shall be performed;

e. daily backgrounds and reference source checks shall be performed when in use or weekly when not in use; and

f. sample log books shall be maintained for all samples that were counted/analyzed on the appropriate systems;

2. gamma spectroscopy systems:

a. the systems shall be calibrated at least yearly and shall include energy, peak width, and efficiency;

b. the systems shall be calibrated according to the appropriate methodologies or the manufacturer's technical manual;

c. daily reference source checks shall be performed when in use or weekly when not in use;

d. monthly background checks should be performed; and

e. sample log books shall be maintained for all samples that were counted/analyzed on the appropriate systems;

3. liquid scintillation systems:

a. the systems shall be calibrated at least yearly and shall include energy, peak width, and efficiency;

b. the systems shall be calibrated according to the appropriate methodologies or the manufacturer's technical manual;

c. daily backgrounds and reference source checks shall be performed when in use or weekly when not in use; and

d. sample log books shall be maintained for all samples that were counted/analyzed on the appropriate systems;

4. alpha spectroscopy systems:

a. the systems shall be calibrated at least yearly;

b. the systems shall be calibrated according to the appropriate methodologies or the manufacturer's technical manual;

c. daily reference source checks shall be performed when in use or weekly when not in use;

d. monthly background checks shall be performed; and

e. sample log books shall be maintained for all samples that were counted/analyzed on the appropriate systems; and

5. analytical instrumentation not mentioned above, such as counter scalers or ionizing radiation detection equipment:

a. the instrumentation shall be calibrated at least yearly or as mandated by a specific regulatory agency such as EPA, Nuclear Regulatory Commission (NRC), or state governments;

b. the instrumentation shall be calibrated according to the appropriate methodologies or to the manufacturer's technical manual;

c. daily backgrounds and reference source checks shall be performed when in use or weekly when not in use, if applicable; and

d. sample log books shall be maintained for all samples that were counted/analyzed on the appropriate systems.

G. Laboratory Environment

1. Radiochemistry and radionuclide assay counting rooms, wet chemistry rooms, and sample preparation and sample storage rooms shall be physically separated. Access and egress shall be controlled.

2. Radiochemistry and radionuclide assay counting rooms shall be adequately monitored for room temperature, humidity, pressure, and electrical supply characteristics on a daily basis when in use. These characteristics shall be maintained to ensure proper operation of the analytical equipment. Records shall be maintained.

3. Adequate measures shall be taken to ensure good housekeeping in the laboratory.

H. Waste Disposal. Radioactive waste disposal shall be thoroughly documented. The documentation shall include the following:

1. quantity disposed of;

2. where the radioactive material was disposed;

3. when it was disposed;

4. who disposed of the material; and

5. activity of disposed material, as applicable.

I. Records (Control Charts)

1. Control charts shall be updated at least monthly.

2. Copies of the control charts shall be available for technician review.

3. Control charts shall have at a minimum the following information:

a. all axes labeled;

b. instrument I.D. and/or serial number;

c. one and two sigma values as well as the normal expected values; and

d. applicable units as necessary.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

**§5311. Quality Assurance for Biomonitoring Laboratories**

A. Quality assurance practices for toxicity testing laboratories must address all activities that affect the quality of the final effluent toxicity data, such as:

1. effluent sampling and handling;

2. the source and condition of the test organisms;

3. condition of equipment;

4. test conditions;

5. instrument calibration;

6. replication;

7. use of reference toxicants;

8. recordkeeping; and

9. data evaluation.

B. Facilities, Equipment, and Test Chambers

1. Separate test organism culturing and toxicity testing areas shall be provided to avoid loss of cultures to cross-contamination. Ventilation systems shall be designed to prevent recirculation of air from chemical analysis laboratories into organism culturing or testing areas and from sample preparation areas into culture rooms.

2. Laboratory and toxicity test temperature control equipment shall be adequate to maintain recommended test water temperatures.

3. Recommended materials shall be used for test equipment and test chambers.

#### C. Laboratory Water Used for Culturing and Test Dilution Water

1. The dilution water used in effluent toxicity tests will depend on the objectives of the study or requirements of discharge permits.

2. Water used for culturing organisms, dilutions, and internal quality assurance tests with food, organisms, and reference toxicants shall be analyzed for toxic metals and organics annually or whenever difficulty is encountered meeting minimum acceptability control requirement. The concentration of the metals Al, As, Cr, Co, Cu, Fe, Pb, Ni, and Zn, expressed as total metals, shall not exceed one ug/L each, and Cd, Hg, and Ag, expressed as total metals shall not exceed 100 ng/L. Total organochlorine pesticides plus PCBs shall be less than 50 ng/L. Pesticide levels shall not exceed EPA's ambient water quality chronic criteria values where available.

3. Water used for culturing and test dilutions shall be prepared using methods in the test manuals.

D. Sample holding times and temperatures of effluent samples must conform to conditions described in the test methods and/or the discharge permit.

#### E. Test Conditions

1. Water temperature shall be maintained within limits specified for each test.

2. Test chambers/rooms shall be adequately monitored by utilizing a seven-day continuous recording chart for temperature and light/dark cycle. Verification that the light/dark cycle is maintained shall be done at a minimum of twice monthly if a recording device is not utilized. Temperature recording charts shall be maintained in record form.

#### F. Test Organism Quality

1. If the laboratory does not maintain in-house cultures of test organisms and obtains organisms from an outside source, the sensitivity of each batch of test organisms shall be determined with the appropriate reference toxicant test performed concurrently with the effluent test, unless the organism supplier provides control chart data from, at a minimum, the last five monthly reference toxicity tests.

2. If the laboratory maintains in-house cultures, the sensitivity of the offspring shall be determined with the appropriate toxicity test performed with a reference toxicant at least once each month. If a given species of test organisms is used only monthly, or less frequently, in toxicity tests, a reference toxicant test shall be performed with each effluent and/or receiving water toxicity test.

3. If the laboratory maintains in-house cultures, records shall be maintained on organism health, mortality, water quality, and culture system maintenance.

4. Test organisms shall be positively identified to species.

#### G. Food Quality

1. Problems with nutritional suitability of food will be reflected in the survival, growth, and reproduction in cultures and toxicity tests. Artemia cysts and other foods shall be obtained and analyzed as described in the test manuals.

2. New batches of food used in culturing and testing should be analyzed for toxic organics and metals or whenever difficulty is encountered meeting minimum acceptability criteria for control survival and reproduction or growth. Foods exceeding the requirements in the test manuals should not be used.

#### H. Test Acceptability

1. A control shall be run with each toxicity test.

2. The minimum criteria stated in the appropriate test manuals and/or the discharge permit must be met for a test to be valid.

3. Individual tests may be conditionally acceptable if temperature, dissolved oxygen (DO), and other specified conditions fall outside specifications, depending on the degree of departure and objectives of the test. The acceptability will depend on the experience and professional judgment of the laboratory investigator and reviewing staff of the regulatory agency.

I. Analytical methods for analyses of culture and dilution water, food, and test solutions must include established quality assurance practices outlined in EPA manuals (USEPA 1979a and USEPA 1979b).

#### J. Calibration and Standardization

1. Instruments used for routine measurements of chemical and physical parameters such as pH, DO, temperature, and conductivity must be calibrated and standardized according to the instrument manufacturer's procedures as indicated in LAC 33:I.5301 on quality assurance. Calibration data is recorded in a permanent log book.

2. Wet chemical methods used to measure hardness, alkalinity, and total residual chlorine must be standardized prior to use each day according to the procedures for these specific EPA methods.

K. The minimum number of replicates stated in the test methods and/or permit shall be used for each toxicity test.

L. It is the laboratory's responsibility to demonstrate its ability to obtain consistent, precise results with reference toxicants before it performs toxicity tests with effluents for permit compliance purposes. To meet this requirement, the intralaboratory precision, expressed as percent coefficient of variation (CV percent), of each type of test used in the laboratory shall be determined by performing five or more tests with different batches of test organisms, using the same reference toxicant at the same concentrations, with the same test conditions and the same data analysis methods. A reference toxicant concentration series (0.5 or higher) shall be selected that will consistently provide partial mortalities at two or more concentrations.

#### M. Documenting Ongoing Laboratory Performance

1. Satisfactory laboratory performance shall be demonstrated by performing one acceptable test per month with a reference toxicant for each test method used in the laboratory. For a given test method, successive tests must be performed with the same reference toxicant, at the same concentrations, in the same dilution, and using the same data analysis methods.

2. A control chart should be prepared for each combination of reference toxicant, test species, test conditions,

and end points. Control limits are stated in test method manuals.

N. Reference toxicants such as sodium chloride (NaCl), potassium chloride (KCl), cadmium chloride (CdCl<sub>2</sub>), copper sulfate (CaSO<sub>4</sub>), sodium dodecyl sulfate (SDS), and potassium dichromate (K<sub>2</sub>Cr<sub>2</sub>O<sub>7</sub>) are suitable for use by the laboratory. Standard reference materials can be obtained from commercial supply houses or can be prepared in-house using reagent grade chemicals.

O. A complete file shall be maintained for each individual toxicity test or group of tests on closely related samples. Original data sheets shall be signed and dated by the personnel performing the tests. The file should contain:

1. a record of the chain of custody;
2. a copy of the sample log sheet;
3. the original bench sheets;
4. chemical analysis data on the sample(s);
5. detailed records of the test organisms used in the test, such as species, source, age, date of receipt, and other pertinent information relating to their history and health;
6. information on calibration of equipment and instruments; and
7. results of reference toxicant tests.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§5313. Reports**

A. The work carried out by the testing laboratory shall be covered by a report that accurately, clearly, and unambiguously presents the test results and all other relevant information. The report format should be specifically designed for the type of test/analysis reported, but standardized headings should be utilized whenever possible.

B. Each test report shall include at least the following information:

1. name and address of testing laboratory;
2. title of report, unique identification of report (such as log number), identification of each page of the report by number, and total number of pages in the report;
3. description and identification of the sample(s);
4. date of receipt of sample(s) and date(s) of performance of test, as appropriate;
5. identification of the test method;
6. any deviations, additions to, or exclusions from the test method and any other information relevant to a specific test;
7. disclosure of any nonstandard test method utilized;
8. measurements, examinations, and results, accompanied by appropriate quality assurance (QA) documents;
9. a statement on measurement uncertainty (where relevant);
10. a signature and title of person(s) accepting technical responsibility for the test report and date of issue;
11. if applicable, a statement that indicates that the results relate only to the items tested; and
12. if applicable, a statement that indicates that the report shall not be reproduced in full (or in part, if required) without the written approval of the customer.

C. Corrections or additions to a test report after issue shall be made only by a further document suitably marked (e.g., "Supplement to test report log number..." or as otherwise identified) and shall meet the relevant requirements of this Section.

D. In instances where the laboratory transmits a report via telephone, telex, facsimile (FAX), or any other means of electronic transmittal, the laboratory must have in place a written procedure that will provide protection and/or preservation of client confidentiality.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§5315. Records**

A. The testing laboratory shall retain on record all raw data and observations, calculations and derived data, calibration records, and the final test report for a minimum of five years or as required by regulatory or legal requirement.

B. All records and test reports shall be held securely and in confidence to the client, unless otherwise required by law.

C. The testing laboratory shall maintain a system that provides for retrievability of the chain of custody of the sample source, the analytical method, results (including calibration and instrument checks), the analyst performing the analysis, and the date. If laboratory records indicate that incorrect or questionable data has been generated by defective or improperly operated equipment, erroneous data entry, or other such anomalies, and a report has been issued, then the laboratory shall immediately notify the client. A written, corrected or amended report must be forwarded to the client.

D. Current reference documents (e.g., EPA manuals, CFRs, Standard Methods) shall be maintained and available to the staff.

E. Entries to all laboratory analytical records shall be made in a legible, permanent fashion and corrections made without obliterating original entries. All corrections shall be initialed and dated.

F. A permanent record of employees' signatures and initials shall be maintained.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

## **Chapter 55. Sample Protocol/Sample Integrity**

### **§5501. Unacceptable Samples**

When a sample is received by the testing laboratory and it is apparent or suspected that the sample protocol has not been followed, the laboratory should have a written procedure for handling of the questionable sample. The laboratory may choose to notify the customer and either request another sample or, if the customer insists upon analysis of the sample, reserve the right to include a disclaimer in the final report identifying the sample anomaly. This disclaimer must be permanently attached to the final report.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

## **Chapter 57. Maintenance of Accreditation**

### **§5701. Display of Accreditation Certificate**

A. A current accreditation document shall be displayed at all times in a location visible to the public in each accredited laboratory. In cases of suspension or discreditation, the document shall be immediately removed.

B. The accreditation documents shall note the scope of accreditation (classes/parameters of approved testing) as well as the time frame for which the laboratory is accredited.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§5703. Renewal of Accreditation**

A. Accreditation shall be renewed annually, provided the testing laboratory has maintained compliance with these regulations, has reported acceptable proficiency test values for accredited classes, and has paid appropriate fees.

B. Failure to receive a renewal notice does not exempt laboratories from meeting the renewal date requirements.

C. Failure to pay the required renewal fees for 30 days shall automatically suspend accreditation of the laboratory until the fee is received by the department.

D. Failure to pay the required renewal fees for 90 days shall automatically result in discreditation of the laboratory. A laboratory whose accreditation has expired may reapply.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§5705. Discreditation and Suspension**

A. The department may suspend or discredit a laboratory in any or all test categories when the laboratory fails to fully meet all requirements of these regulations. Factors such as the gravity of the offense, the danger to the public of the offense, the intent of the violation, the extent of the violation, and the proposed correction of the problem will be considered to determine if suspension or discreditation is to be imposed. An emergency order immediately discrediting the laboratory may be issued if any conditions exist that present an eminent danger to public health and safety.

B. The department shall notify the laboratory by registered or certified letter of the suspension or discreditation and the reasons for the action.

C. Suspensions shall not be withdrawn until the basis for the suspension has been eliminated or rectified.

D. Appeals for laboratories that have received discreditation notices are governed by applicable statutes.

E. If the testing laboratory's accreditation is revoked by the department or another agency having primary enforcement responsibility or delegated administrative responsibility (e.g., out-of-state laboratories), the laboratory management shall notify, in writing, all clients that utilize the laboratory for analysis of samples and reporting of data to the department that the laboratory's accreditation has been revoked. Clients must be advised of the change in accreditation status within 10 calendar days from the official notice of the action.

F. The following shall be considered grounds for discreditation/suspension:

1. violation of a condition of the accreditation;

2. violation of a statute, regulation, or order of the department;

3. misrepresentations or falsifications made to the department, including any documents associated with accreditation applications;

4. demonstrable nonconformance with the requirements of these regulations, including failure to correct deficiencies;

5. nonpayment of applicable fees;

6. demonstrating incompetence or making consistent errors in analyses or erroneous reporting;

7. failure to report, in writing within 30 days, any changes in location, ownership, management and supervisory staff, authorized representative, major facilities of the laboratory, modification of technique, or any revisions to the accreditation application or required support documentation;

8. failure to employ approved testing methods in the performance of analyses;

9. failure to maintain facilities or equipment properly;

10. failure to report analytical test results as required or to maintain required records of test results;

11. failure to participate successfully in a required performance evaluation program;

12. violation or aiding and abetting in the violation of any provision of these regulations or the rules promulgated hereunder;

13. advertising false credentials;

14. failure to indicate clearly in the records when analyses were subcontracted to another laboratory;

15. performing and charging for additional tests or analyses that have not been requested by the customer, falsifying analyses, or engaging in other unethical or fraudulent practices; and

16. subcontracting performance evaluation samples to another laboratory and using the results to satisfy requirements for accreditation.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§5707. Changes in Laboratory Operation**

Changes in laboratory name, ownership, location, personnel, facilities, methodology, or any factors significantly affecting the performance of analyses for which the laboratory was originally accredited shall be reported to the department within 30 days.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

### **§5709. Reaccreditation**

Reaccreditation shall require the submission of a new, revised application demonstrating and documenting corrective action implemented since loss of accreditation status.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

A public hearing will be held on February 27, 1998, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested



**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Waste Services**

**RCRA Updates**

(LAC 33:V.Chapters 1, 3, 5, 7, 9, 11, 13, 15,  
22, 25, 31, 33, 38, 41, 43, and 49)(HW061\*)

persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS007. Such comments must be received no later than March 6, 1998, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or FAX (504) 765-0486.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Herman Robinson  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Laboratory Accreditation**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Implementation of the proposed rule by the department is estimated to cost the agency a total of \$571,402 over the first three years. Most, if not all, local government-owned laboratories will not be affected as they are not commercial laboratories. Local government-owned facilities that utilize commercial environmental laboratories may see some increased cost through higher prices from the commercial laboratories.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is estimated that the Department of Environmental Quality will collect \$555,000 in fees from the regulated laboratories over the first three full years of the program. No other revenue collections are expected to be affected.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Commercial environmental laboratories, which are to be regulated by this rule, are estimated to incur \$11,148,700 in additional costs due to the implementation of this proposed rule over the first three full years of the program. This number includes the estimated \$555,000 in fees that will be collected from the regulated laboratories in the first three years.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

As this rule will apply minimum standards to all commercial environmental laboratories in the state, it is expected to promote fairer competition between commercial environmental laboratories. It is not expected to significantly impact employment in the state.

J. Dale Givens  
Secretary  
9801#076

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste Division regulations, LAC 33:V.Chapters 1, 3, 5, 7, 9, 11, 13, 15, 22, 25, 31, 33, 38, 41, 43, and 49 (HW061\*).

This proposed rule is identical to a federal law or regulation, 60 FR 35703-35706, 50426-50430, 55202-55206, 63417-63434; 61 FR 4903-4916, 13103-13106, 15566-15660, 15660-15668, 16290-16316, 19117, 33680-33690, 33691, 36419-36421, 43924-43931; 62 FR 7502-7600, which is applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division at the address or phone number given below. No fiscal or economic impact will result from the proposed rule. Therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4). This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This proposed rule includes the addition of tests to demonstrate that a sorbent is nonbiodegradable. It will improve the process for permitting facilities that store, treat, or dispose of hazardous waste by providing opportunities for public involvement earlier in the process and by expanding public access to information throughout the permitting process and the operational lives of facilities, requiring prospective applicants to hold an informal public meeting before submitting an application for a RCRA permit and to advertise this meeting in the newspaper, through broadcast media, and on a sign posted at or near the property. A permitting agency may mail a notice to interested persons when the facility submits its application and, as the agency deems necessary, may require a facility owner or operator to set up an information repository that will hold all information and documents the permitting agency has decided is necessary, and may require combustion facilities (i.e., incinerators and other facilities that burn hazardous wastes) to notify the public before they hold a trial burn. An error in the text pertaining to regulatory exclusion from the definition of solid waste for recovered oil that is inserted into the petroleum refining process is corrected. The rule adds procedural controls governing the export and import of wastes when shipped for recovery among Organization for Economic Cooperation and Development (OECD) countries. The basis and rationale for this rule are to make the state regulations equivalent with federal regulations.

**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 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.

\* \* \*

[See Prior Text in A-D.44.f]

g. recovered oil from petroleum refining, exploration and production, and from transportation incident thereto, which is to be inserted into the petroleum refining process (SIC Code 2911) at or before a point (other than direct insertion into a coker) where contaminants are removed. This exclusion applies to recovered oil stored or transported prior to insertion, except that the oil must not be stored in a manner involving placement on the land, and must not be accumulated speculatively, before being so recycled. Recovered oil is oil that has been reclaimed from secondary materials (such as wastewater) generated from normal petroleum refining, exploration and production, and transportation practices. Recovered oil includes oil that is recovered from refinery wastewater collection and treatment systems, oil recovered from oil and gas drilling operations, and oil recovered from wastes removed from crude oil storage tanks. Recovered oil does not include (among other things) oil-bearing hazardous wastes listed in LAC 33:V.4901 (e.g., K048-K052, F037, F038). However, oil recovered from such wastes may be considered recovered oil. Recovered oil also does not include used oil as defined in LAC 33:V.4001.

\* \* \*

[See Prior Text in D.44-M.10]

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:

**§109. Definitions**

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

\* \* \*

[See Prior Text]

*Competent Authorities*—the regulatory authorities of concerned countries having jurisdiction over transfrontier movements of wastes destined for recovery operations.

\* \* \*

[See Prior Text]

*Concerned Countries*—the exporting and importing Organization for Economic Cooperation and Development (OECD) member countries and any OECD member countries of transit.

\* \* \*

[See Prior Text]

*Consignee*—(as used in LAC 33:V.1131) the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the importing country.

*Consignee*—(as used in LAC 33:V.Chapter 11, except §1131) the ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

\* \* \*

[See Prior Text]

*Country of Transit*—any designated OECD country in LAC 33:V.1113.I.1.a and b other than the exporting or importing country across which a transfrontier movement of wastes is planned or takes place.

\* \* \*

[See Prior Text]

*Exporting Country*—any designated OECD member country in LAC 33:V.1113.I.1.a from which a transfrontier movement of wastes is planned or has commenced.

\* \* \*

[See Prior Text]

*Importing Country*—any designated OECD country in LAC 33:V.1113.I.1.a to which a transfrontier movement of wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

\* \* \*

[See Prior Text]

*Notifier*—the person under the jurisdiction of the exporting country who has, or will have at the time the planned transfrontier movement commences, possession or other forms of legal control of the wastes and who proposes their transfrontier movement for the ultimate purpose of submitting them to recovery operations. When the United States is the exporting country, notifier is interpreted to mean a person domiciled in the United States.

\* \* \*

[See Prior Text]

*Organization for Economic Cooperation and Development (OECD) Area*—all land or marine areas under the national jurisdiction of any designated OECD member country in LAC 33:V.1113.I. When the regulations refer to shipments to or from an OECD country, this means OECD area.

\* \* \*

[See Prior Text]

**Recognized Trader**—a person who, with appropriate authorization of concerned countries, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transfrontier movements of wastes destined for recovery operations.

**Recovery Facility**—an entity which, under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them.

**Recovery Operations**—activities leading to resource recovery, recycling, reclamation, direct reuse or alternative uses as listed in Table 2.B of the Annex of OECD Council Decision C(88)90(Final) of 27 May 1988, (available from the Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, First Floor, Arlington, VA 22203 (Docket Number F-94-IEHF-FFFFF) and the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France), which include the following operations:

Code	Recovery Operations
R1	Use as a fuel (other than in direct incineration) or other means to generate energy
R2	Solvent reclamation/regeneration
R3	Recycling/reclamation of organic substances that are not used as solvents
R4	Recycling/reclamation of metals and metal compounds
R5	Recycling/reclamation of other inorganic materials
R6	Regeneration of acids or bases
R7	Recovery of components used for pollution control
R8	Recovery of components from catalysts
R9	Used oil re-refining or other reuses of previously used oil
R10	Land treatment resulting in benefit to agriculture or ecological improvement
R11	Uses of residual materials obtained from any of the operations numbered R1-R10
R12	Exchange of wastes for submission to any of the operations numbered R1-R11
R13	Accumulation of material intended for any operation in Table 2.B of the Annex of OECD Council Decision

\* \* \*

[See Prior Text]

**Transfrontier Movement**—any shipment of wastes destined for recovery operations from an area under the national jurisdiction of one OECD member country to an area under the national jurisdiction of another OECD member country.

\* \* \*

[See Prior Text]

**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 15:378 (May 1989), LR 15:737 (September 1989), LR 16:47 (January 1990), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

**§110. References**

\* \* \*

[See Prior Text in A-A.15]

0010	Modified Method 5 Sampling Train
* * *	
[See Prior Text]	
9320	Radium-228

\*When Method 9066 is used it must be preceded by the manual distillation specified in procedure 7.1 of Method 9065. Just prior to distillation in Method 9065, adjust the sulfuric acid-preserved sample to pH 4 with 1 + 9 NaOH. After the manual distillation is completed, the autoanalyzer manifold is simplified by connecting the re-sample line directly to the sampler.

16. The OECD Green List of Wastes (revised May 1994), the Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4, and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations). These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on July 11, 1996. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the *Federal Register*. The materials are available for inspection at: the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.; the U.S. Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, First Floor, Arlington, VA 22203 (Docket Number F-94-IEHF-FFFFF); and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 Rue Andre Pascal, 75775 Paris Cedex 16, France.

\* \* \*

[See Prior Text in B]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:814 (September 1996), amended

by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits**

#### **§309. Conditions Applicable to All Permits**

Each permit shall include permit conditions necessary to achieve compliance with the Act and these regulations, including each of the applicable requirements specified in LAC 33:V.Subpart 1. In satisfying this provision, the administrative authority may incorporate applicable requirements of LAC 33:V.Subpart 1 directly into the permit or establish other permit conditions that are based on LAC 33:V.Subpart 1. The following conditions apply to all hazardous waste permits. All conditions applicable to permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

\* \* \*

[See Prior Text in A-L.12]

M. Information Repository. The administrative authority may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in LAC 33:V.708.C.2. The information repository will be governed by the provisions in LAC 33:V.708.C.3-6.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:944 (September 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **Chapter 5. Permit Application Contents**

#### **Subchapter D. Part II General Permit Information Requirements**

##### **§517. Part II Information Requirements (the Formal Permit Application)**

The formal permit application information requirements presented in this Section reflect the standards promulgated in LAC 33:V.Subpart 1. These information requirements are necessary in order to determine compliance with all standards. Responses and exhibits shall be numbered sequentially according to the technical standards. The permit application must describe how the facility will comply with each of the sections of LAC 33:V.Chapters 15-37 and 41. Information required in the formal permit application shall be submitted to the administrative authority and signed in accordance with requirements in LAC 33:V.509. The description must include appropriate design information (calculations, drawings, specifications, data, etc.) and administrative details (plans, flow charts, decision trees, manpower projections, operating instructions, etc.) to permit the administrative authority to determine the adequacy of the hazardous waste permit application. Certain technical data, such as design drawings, specifications, and engineering studies, shall be certified by a registered professional engineer. If a section does not apply, the permit application must state it does not apply and why it does not apply. This information is to be submitted using the

same numbering system and in the same order used in these regulations:

\* \* \*

[See Prior Text in A-U]

V. for land disposal facilities, if a case-by-case extension has been approved under LAC 33:V.2239 or a petition has been approved under LAC 33:V.2241 or 2242, a copy of the notice of approval for the extension or petition is required; and

W. a summary of the preapplication meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under LAC 33:V.708.A.3.

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 10:280 (April 1984), LR 13:433 (August 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **Subchapter F. Special Forms of Permits**

#### **§537. Permits for Boiler and Industrial Furnaces**

##### **Burning Hazardous Waste for Recycling Purposes Only (boilers and industrial furnaces burning hazardous waste for destruction are subject to permit requirements for incinerators)**

\* \* \*

[See Prior Text in A-B.2.f]

g. The administrative authority must send a notice to all persons on the facility mailing list, as set forth in LAC 33:V.717.A.5, and to the appropriate units of state and local government, as set forth in LAC 33:V.717.A.2, announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the administrative authority has issued such notice.

i. This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

ii. This notice must contain:

(a). the name and telephone number of the applicant's contact person;

(b). the name and telephone number of the permitting agency's contact office;

(c). the location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(d). an expected time period for commencement and completion of the trial burn.

h. During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations and analyses:

i. a quantitative analysis of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride in the feedstreams

(hazardous waste, other fuels, and industrial furnace feedstocks) to the boiler or industrial furnace is required;

ii. a quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHCs is required;

iii. if dioxin and furan testing is required under LAC 33:V.3009.E, a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard are required;

iv. a quantitative analysis of the stack gas for the concentration and mass emission of particulate matter, metal(s) or hydrogen chloride (HCl) and chlorine gas (Cl<sub>2</sub>) and a computation showing conformance with the metals or HCl emission performance standard in LAC 33:V.3011 and 3015 are required;

v. a quantitative analysis of the scrubber water (if any), ash residues, and other residues is required for the purpose of estimating the fate of the trial POHCs, the fate of any metal, and the fate of chlorine/chloride subject to emissions testing under LAC 33:V.537.B.2.g.iii.(b);

vi. destruction and removal efficiency (DRE) must be computed in accordance with the DRE formula specified in LAC 33:V.3009.A;

vii. sources of fugitive emissions and their means of control must be identified;

viii. carbon monoxide, total hydrocarbons, and oxygen in the stack gas must be continuously measured. The administrative authority may approve an alternative scheme for monitoring total hydrocarbons;

ix. a quantitative analysis of the exhaust gas for the concentration and mass emission of particulate matter, and a computation showing conformance with the particulate matter standard in LAC 33:V.3011 is required; and

x. any other information will be required that the administrative authority specifies as necessary to ensure that the trial burn will reveal whether the facility complies with the performance standards required by LAC 33:V.3009-3015.

i. The applicant must submit to the administrative authority a certification that the trial burn has been conducted in accordance with the approved trial burn plan and must submit the results of all the analyses and determinations required in Subsection B.2.h of this Section. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the administrative authority.

j. All data collected during any trial burn must be submitted to the administrative authority after completion of the trial burn.

k. All submissions required by this Paragraph must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under LAC 33:V.507 and 509.

l. Based on the results of the trial burn, the administrative authority shall specify the operating requirements in the final permit according to LAC 33:V.3005.E. The permit modification shall proceed as a minor modification according to LAC 33:V.323.

\*\*\*

[See Prior Text in B.3-4]

### C. Interim Status Boilers and Industrial Furnaces

1. For the purpose of determining feasibility of compliance with the performance standards of LAC 33:V.3009-3015 of this Chapter and of determining adequate operating conditions under LAC 33:V.3007, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of LAC 33:V.3007 must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this Section or submit other information as specified in LAC 33:V.535.A.6. The administrative authority must announce his or her intention to approve of the trial burn plan in accordance with the timing and distribution requirements of Subsection B.2.g of this Section. The contents of the notice must include:

a. the name and telephone number of a contact person at the facility;

b. the name and telephone number of a contact office at the permitting agency;

c. the location where the trial burn plan and any supporting documents can be reviewed and copied; and

d. a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time periods during which the trial burn would be conducted.

2. Applicants who submit a trial burn plan and receive approval before submission of part II of the permit application must complete the trial burn and submit the results specified in LAC 33:V.537.B.2.h with part II of the permit application. If completion of this process conflicts with the date set for submission of part II, the applicant must contact the administrative authority to establish a later date for submission of part II or the trial burn results. If the applicant submits a trial burn plan with part II of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the administrative authority.

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 15:737 (September 1989), amended LR 18:1375 (December 1992), LR 21:266 (March 1995), LR 22:818 (September 1996), LR 22:832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

## Chapter 7. Administrative Procedures for Treatment, Storage, and Disposal Facility Permits

### Subchapter A. Permits

#### §701. Emergency Permits

Notwithstanding any other provision, in the event the administrative authority finds an imminent and substantial endangerment to human health or the environment, he may issue a temporary emergency permit (1) to a nonpermitted facility to allow treatment, storage, or disposal of hazardous waste or (2) to a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit. This emergency permit:

\*\*\*

[See Prior Text in A-D]

E. shall be accompanied by a public notice published under LAC 33:V.715 including:

\* \* \*

[See Prior Text in E.1-F]

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 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

## **Subchapter B. Hearings**

### **§708. Preapplication Public Meeting and Notice, Public Notice Requirements at the Application Stage, and Information Repository**

#### **A. Preapplication Public Meeting and Notice**

1. Applicability. The requirements of this Section shall apply to all RCRA part II applications seeking initial permits for hazardous waste management units over which the department has permit issuance authority. The requirements of this Section shall also apply to RCRA part II applications seeking renewal of permits for such units where the renewal application is proposing a significant change in facility operations. For the purposes of this Section a "significant change" is any change that would qualify as a class 3 permit modification under LAC 33:V.321.C. The requirements of this Section do not apply to permit modifications under LAC 33:V.321.C or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

2. Prior to the submission of a part II RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

3. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under Subsection A.2 of this Section, and copies of any written comments or materials submitted at the meeting to the permitting agency as a part of the part II application, in accordance with LAC 33:V.517.

4. The applicant must provide public notice of the preapplication meeting at least 30 days prior to the meeting. The applicant must maintain, and provide to the permitting agency upon request, documentation of the notice.

a. The applicant shall provide public notice in all of the following forms:

i. a newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in Subsection A.4.b of this Section, in a newspaper of general circulation in the parish or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the administrative authority shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent parishes or equivalent jurisdictions where the administrative authority determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement;

ii. a visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in Subsection A.4.b of this Section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site;

iii. a broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in Subsection A.4.b of this Section, at least once, on at least one local radio station or television station. The applicant may employ another medium with prior approval of the administrative authority;

iv. a notice to the department. The applicant shall send a copy of the newspaper notice to the department and to the appropriate units of state and local government, in accordance with LAC 33:V.717.A.2.

b. The notices required under Subsection A.4.a of this Section must include:

i. the date, time, and location of the meeting;

ii. a brief description of the purpose of the meeting;

iii. a brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

iv. a statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

v. the name, address, and telephone number of a contact person for the applicant.

#### **B. Public Notice Requirements at the Application Stage**

1. Applicability. The requirements of this Section shall apply to all RCRA part II applications seeking initial permits for hazardous waste management units over which the department has permit issuance authority. The requirements of this Section shall also apply to RCRA part II applications seeking renewal of permits for such units under LAC 33:V.315.A. The requirements of this Section do not apply to permit modifications under LAC 33:V.321.C or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

#### **2. Notification at Application Submittal**

a. The administrative authority shall provide public notice, as set forth in LAC 33:V.717.A.5, and notice to appropriate units of state and local government, as set forth in LAC 33:V.717.A.2, that a part II permit application has been submitted to the department and is available for review.

b. The notice shall be published within a reasonable period of time after the application is received by the administrative authority. The notice must include:

i. the name and telephone number of the applicant's contact person;

ii. the name and telephone number of the permitting agency's contact office and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

iii. an address to which people can write in order to be put on the facility mailing list;

iv. the location where copies of the permit application and any supporting documents can be viewed and copied;

v. a brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

vi. the date that the application was submitted.

3. Concurrent with the notice required under Subsection B.2 of this Section, the administrative authority must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

#### C. Information Repository

1. Applicability. The requirements of this Section apply to all applications seeking RCRA permits for hazardous waste management units over which the department has permit issuance authority.

2. The administrative authority may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the administrative authority shall consider a variety of factors including the level of public interest, the type of facility, the presence of an existing repository, and the proximity to the nearest copy of the administrative record. If the administrative authority determines, at any time after submittal of a permit application, that there is a need for a repository, then the administrative authority shall notify the facility that it must establish and maintain an information repository. (See LAC 33:V.309.M for similar provisions relating to the information repository during the life of a permit.)

3. The information repository shall contain all documents, reports, data, and information deemed necessary by the administrative authority to fulfill the purposes for which the repository is established. The administrative authority shall have the discretion to limit the contents of the repository.

4. The information repository shall be located and maintained at a site chosen by the facility. If the administrative authority finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the administrative authority shall specify a more appropriate site.

5. The administrative authority shall specify requirements for informing the public about the information repository. At a minimum, the administrative authority shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

6. The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the administrative authority. The administrative authority may close the repository at his or her discretion, based on the factors in Subsection C.2 of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:

## Chapter 9. Manifest System for TSD Facilities

### §905. Use of the Manifest System

\* \* \*

[See Prior Text in A-C]

D. Within three working days of the receipt of a shipment subject to LAC 33:V.Chapter 11.Subchapter B, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, and to competent authorities of all other concerned countries. A copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

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 17:364 (April 1991), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

## Chapter 11. Generators

### Subchapter A. General

#### §1101. Applicability

\* \* \*

[See Prior Text in A]

B. Any person who exports or imports hazardous waste subject to the manifesting requirements of this Chapter, or subject to the universal waste management standards of LAC 33:V.Chapter 38, to or from the countries listed in LAC 33:V.1113.I.1.a for recovery must comply with Subchapter B of this Chapter.

C. Any person who imports hazardous waste from a foreign country into the state of Louisiana must comply with the standards applicable to generators established in this Chapter.

D. A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of LAC 33:V.105.D.5 is not required to comply with other standards in this Chapter or LAC 33:V.Subpart 1 with respect to such pesticides.

E. A person who generates a hazardous waste as defined in LAC 33:V.109 and further specified in LAC 33:V.Chapter 49 is subject to the requirements of this Chapter and penalties prescribed in the Act for noncompliance.

F. An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this Chapter. The provisions of LAC 33:V.1109.E are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of LAC 33:V.1109.E only apply to owners or operators who are shipping hazardous waste which they generated at that facility. A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in LAC 33:V.Subpart 1.

G. A person who generates a hazardous waste as defined in LAC 33:V.109 and further specified in LAC 33:V.Chapter

49 is subject to the requirements of these chapters and shall register with the department in accordance with the applicable provisions of LAC 33:V.303.

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 16:398 (May 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 22:20 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **§1113. Exports of Hazardous Waste**

\* \* \*

[See Prior Text in A-H.2]

#### **I. International Agreements**

1. Any person who exports or imports hazardous waste subject to manifest requirements of this Chapter, or subject to the universal waste management standards of LAC 33:V.Chapter 38, to or from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in LAC 33:V.1113.I.1.a, for purposes of recovery is subject to Subchapter B of this Section. The requirements of this Section and LAC 33:V.1123 do not apply.

a. For the purposes of these regulations the designated OECD countries consist of Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

b. For the purposes of these regulations, Canada and Mexico are considered OECD member countries only for the purpose of transit.

2. Any person who exports hazardous waste to or imports hazardous waste from a designated OECD member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of this Section and LAC 33:V.1123.

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 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 22:20 (January 1996), LR 22:344 (May 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

#### **Subchapter B. Transfrontier Shipments of Hazardous Waste**

### **§1127. Transfrontier Shipments of Hazardous Waste for Recovery Within the OECD**

#### **A. Applicability**

1. The requirements of this Subchapter apply to imports and exports of wastes that are considered hazardous under United States national procedures and are destined for recovery operations in the countries listed in LAC 33:V.1113.I.1.a. A waste is considered hazardous under United States national procedures if it meets the definition of

hazardous waste in LAC 33:V.109 and is subject to either the manifesting requirements in LAC 33:V.1107 or to the universal waste management standards of LAC 33:V.Chapter 38.

2. Any person (notifier, consignee, or recovery facility operator) who mixes two or more wastes (including hazardous and nonhazardous wastes) or otherwise subjects two or more wastes (including hazardous and nonhazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any notifier duties, if applicable, under this Subchapter.

#### **B. General Conditions**

1. Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to a green, amber, or red list and by United States national procedures as defined in Subsection A.1 of this Section. The green, amber, and red lists are incorporated by reference in LAC 33:V.110.A.16.

a. Wastes on the green list are subject to existing controls normally applied to commercial transactions, except as provided in the following:

i. green-list wastes that are considered hazardous under United States national procedures are subject to amber-list controls;

ii. green-list wastes that are sufficiently contaminated or mixed with amber-list wastes such that the waste or waste mixture is considered hazardous under United States national procedures are subject to amber-list controls;

iii. green-list wastes that are sufficiently contaminated or mixed with other wastes subject to red-list controls such that the waste or waste mixture is considered hazardous under United States national procedures must be handled in accordance with the red-list controls.

b. Wastes on the amber list that are considered hazardous under United States national procedures as defined in Subsection A.1 of this Section are subject to the amber-list controls of this Subchapter.

i. If amber-list wastes are sufficiently contaminated or mixed with other wastes subject to red-list controls such that the waste or waste mixture is considered hazardous under United States national procedures, the wastes must be handled in accordance with the red-list controls.

#### **ii. Reserved**

c. Wastes on the red list that are considered hazardous under United States national procedures as defined in Subsection A.1 of this Section are subject to the red-list controls of this Subchapter.

*Note:* Some wastes on the amber or red lists are not listed or otherwise identified as hazardous under RCRA (e.g., polychlorinated biphenyls) and, therefore, are not subject to the amber-list or red-list controls of this Subchapter. Regardless of the status of the waste under RCRA, however, other federal environmental statutes (e.g., the Toxic Substances Control Act) may restrict certain waste imports or exports. Such restrictions continue to apply without regard to this Subchapter.

d. Wastes not yet assigned to a list are eligible for transfrontier movements, as follows:



i. if such wastes are considered hazardous under United States national procedures as defined in Subsection A.1 of this Section, these wastes are subject to the red-list controls; or

ii. if such wastes are not considered hazardous under United States national procedures as defined in Subsection A.1 of this Section, such wastes may move as though they appeared on the green list.

## 2. General Conditions Applicable to Transfrontier Movements of Hazardous Waste

a. The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country.

b. The transfrontier movement must be in compliance with applicable international transport agreements.

*Note:* These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

c. Any transit of waste through a non-OECD member country must be conducted in compliance with all applicable international and national laws and regulations.

## 3. Provisions Relating to Re-export for Recovery to a Third Country

a. Re-export of wastes subject to the amber-list control system from the United States, as the importing country, to a third country listed in LAC 33:V.1113.I.1.a may occur only after a notifier in the United States provides notification to and obtains consent of the competent authorities in the third country, the original exporting country, and new transit countries. The notification must comply with the notice and consent procedures in Subsection C of this Section for all concerned countries, and the original exporting country. The competent authorities of the original exporting country as well as the competent authorities of all other concerned countries have 30 days to object to the proposed movement.

i. The 30-day period begins once the competent authorities of both the initial exporting country and new importing country issue Acknowledgements of Receipt of the notification.

ii. The transfrontier movement may commence if no objection has been lodged after the 30-day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

b. Re-export of wastes subject to the red-list control system from the original importing country to a third country listed in LAC 33:V.1113.I.1.a may occur only following notification of the competent authorities of the third country, the original exporting country, and new transit countries by a notifier in the original importing country in accordance with Subsection C of this Section. The transfrontier movement may not proceed until receipt by the original importing country of written consent from the competent authorities of the third country, the original exporting country, and new transit countries.

c. In the case of re-export of amber-list or red-list wastes to a country other than those in LAC 33:V.1113.I.1.a,

notification to and consent of the competent authorities of the original OECD member country of export and any OECD member countries of transit is required as specified in Subsection B.3.a-b of this Section in addition to compliance with all international agreements and arrangements to which the first importing OECD member country is a party and all applicable regulatory requirements for exports from the first importing country.

## C. Notification and Consent

1. Applicability. Consent must be obtained from the competent authorities of the relevant OECD importing and transit countries prior to exporting hazardous waste destined for recovery operations subject to this Subchapter. Hazardous wastes subject to amber-list controls are subject to the requirements of Subsection C.2 of this Section; hazardous wastes subject to red-list controls are subject to the requirements of Subsection C.3 of this Section; and wastes not identified on any list are subject to the requirements of Subsection C.4 of this Section.

2. Amber-List Wastes. The export from the United States of hazardous wastes as described in Subsection A.1 of this Section that appear on the amber list is prohibited unless the notification and consent requirements of this Subsection are met.

### a. Transactions Requiring Specific Consent

i. Notification. At least 45 days prior to commencement of the transfrontier movement, the notifier must provide written notification in English of the proposed transfrontier movement to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in Subsection C.5 of this Section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier may submit one notification of intent to export these wastes in multiple shipments during a period of up to one year.

ii. Tacit Consent. If no objection has been lodged by any concerned country (i.e., exporting, importing, or transit countries) to a notification provided pursuant to Subsection C.2.a.i of this Section within 30 days after the date of issuance of the Acknowledgment of Receipt of notification by the competent authority of the importing country, the transfrontier movement may commence. Tacit consent expires one calendar year after the close of the 30-day period; renotification and renewal of all consents are required for exports after that date.

iii. Written Consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than 30 days, the transfrontier movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise

specified; renotification and renewal of each expired consent is required for exports after that date.

b. Shipments to Facilities Preapproved by the Competent Authorities of the Importing Countries to Accept Specific Wastes for Recovery

i. The notifier must provide EPA the information identified in Subsection C.5 of this Section, in English, at least 10 days in advance of commencing shipment to a preapproved facility. The notification should indicate that the recovery facility is preapproved and may apply to a single specific shipment or to multiple shipments as described in Subsection C.2.a.i of this Section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, with the words "OECD Export Notification-Preapproved Facility" prominently displayed on the envelope.

ii. Shipments may commence after the notification required in Subsection C.2.a.i of this Section has been received by the competent authorities of all concerned countries, unless the notifier has received information indicating that the competent authorities of one or more concerned countries objects to the shipment.

3. Red-List Wastes. The export from the United States of hazardous wastes as described in Subsection A.1 of this Section that appear on the red list is prohibited unless notice is given in accordance with Subsection C.2.a.i of this Section and the notifier receives written consent from the importing country and any transit countries prior to commencement of the transfrontier movement.

4. Unlisted Wastes. Wastes not assigned to the green, amber, or red list that are considered hazardous under United States national procedures as defined in Subsection A.1 of this Section are subject to the notification and consent requirements established for red-list wastes in accordance with Subsection C.3 of this Section. Unlisted wastes that are not considered hazardous under United States national procedures as defined in Subsection A.1 of this Section are not subject to amber or red controls when exported or imported.

5. Notification Information. Notifications submitted under this Section must include:

- a. serial number or other accepted identifier of the notification form;
- b. notifier name and EPA identification number (if applicable), address, and telephone and telefax numbers;
- c. importing recovery facility name, address, telephone and telefax numbers, and technologies employed;
- d. consignee name (if not the owner or operator of the recovery facility), address, and telephone and telefax numbers; whether the consignee will engage in waste exchange or storage prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;
- e. intended transporters and/or their agents;
- f. country of export and relevant competent authority and point of departure;

g. countries of transit and relevant competent authorities and points of entry and departure;

h. country of import and relevant competent authority and point of entry;

i. statement of whether the notification is a single notification or a general notification. If general, include the period of validity requested;

j. date foreseen for commencement of transfrontier movement;

k. designation of waste type(s) from the appropriate list (amber or red and waste list code), descriptions of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type; and

l. certification/declaration signed by the notifier that states:

"I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement."

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*Note:* The United States does not currently require financial assurance; however, United States exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

#### D. Tracking Document

1. All United States parties subject to the contract provisions of Subsection E of this Section must ensure that a tracking document meeting the conditions of Subsection D.2 of this Section accompanies each transfrontier shipment of wastes subject to amber-list or red-list controls from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or exchanged by the consignee prior to shipment to the final recovery facility, except as provided in Subsection D.1.a-b of this Section.

a. For shipments of hazardous waste within the United States solely by water (bulk shipments only) the generator must forward the tracking document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water (in accordance with the manifest routing procedures in LAC 33:V.1107.D.3).

b. For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the tracking document with the manifest (in accordance with the routing procedures for the manifest in LAC 33:V.1107.D.4) to the next nonrail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

2. The tracking document must include all information required under Subsection C of this Section for notification and the following:

- a. date shipment commenced;
- b. name (if not notifier), address, and telephone and telefax numbers of primary exporter;
- c. company name and EPA ID number of all transporters;

d. identification (license, registered name, or registration number) of means of transport, including types of packaging;

e. any special precautions to be taken by transporters;

f. certification/declaration signed by notifier that no objection to the shipment has been lodged as follows:

"I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement, and that:

[List the following sentence that is applicable]

1. all necessary consents have been received; or

2. the shipment is directed at a recovery facility within the OECD area and no objection has been received from any of the concerned countries within the 30 day tacit consent period; or

3. the shipment is directed at a recovery facility preauthorized for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the concerned countries."

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

and

g. appropriate signatures for each custody transfer (e.g., transporter, consignee, and owner or operator of the recovery facility).

3. Notifiers also must comply with the special manifest requirements of LAC 33:V.1113.E.1, 2, 3, 5, and 9; and consignees must comply with the import requirements of LAC 33:V. 1123.

4. Each United States person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the tracking document (e.g., transporter, consignee, and owner or operator of the recovery facility).

5. Within three working days of the receipt of imports subject to this Subchapter, the owner or operator of the United States recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, and to the competent authorities of the exporting and transit countries.

#### E. Contracts

1. Transfrontier movements of hazardous wastes subject to amber or red control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the notifier and the owner or operator of the recovery facility and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this Section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangement.

2. Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of:

a. the generator of each type of waste;

b. each person who will have physical custody of the wastes;

c. each person who will have legal control of the wastes; and

d. the recovery facility.

3. Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if its disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

a. the person having actual possession or physical control over the wastes will immediately inform the notifier and the competent authorities of the exporting and importing countries and, if the wastes are located in a country of transit, the competent authorities of that country; and

b. the person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging their return to the original country of export.

4. Contracts must specify that the consignee will provide the notification required in Subsection B.3 of this Section prior to re-export of controlled wastes to a third country.

5. Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any concerned country, in accordance with applicable national or international law requirements.

*Note:* Financial guarantees so required are intended to provide for alternate recycling, disposal, or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD countries do. It is the responsibility of the notifier to ascertain and comply with such requirements; in some cases, transporters or consignees may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

6. Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this Subchapter.

7. Upon request by EPA, United States notifiers, consignees, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

*Note:* Although the United States does not require routine submission of contracts at this time, OECD Council Decision C(92)39/FINAL allows members to impose such requirements. When other OECD countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed

movements, EPA will request the required information; absent submission of such information, some OECD countries may deny consent for the proposed movement.

#### F. Provisions Relating to Recognized Traders

1. A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable federal laws.

2. A recognized trader acting as a notifier or consignee for transfrontier shipments of waste must comply with all the requirements of this Subchapter associated with being a notifier or consignee.

#### G. Reporting and Recordkeeping

1. Annual Reports. For all waste movements subject to this Subchapter, persons (e.g., notifiers, recognized traders) who meet the definition of primary exporter in LAC 33:V.109 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an annual report for waste exports that are not covered under this Subchapter, he may include all export information in one report provided the information required by this Subsection on exports of waste destined for recovery within the designated OECD member countries is contained in a separate Section.) Such reports shall include the following:

- a. the EPA identification number, name, and mailing and site address of the notifier filing the report;
- b. the calendar year covered by the report;
- c. the name and site address of each final recovery facility;
- d. by final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from LAC 33:V.Chapter 49), designation of waste type(s) from OECD waste lists and applicable waste code from the OECD lists, the DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this Subchapter, and the number of shipments pursuant to each notification;
- e. in even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000 kg in a calendar month and except for hazardous waste for which information was already provided pursuant to LAC 33:V.1111.B:
  - i. a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and
  - ii. a description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and
- f. a certification signed by the person acting as primary exporter that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this 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."

2. Exception Reports. Any person who meets the definition of primary exporter in LAC 33:V.109 must file an exception report, in lieu of the requirements of LAC 33:V.1111.C, with the administrative authority if any of the following occurs:

- a. he has not received a copy of the tracking documentation signed by the transporter stating point of departure of the waste from the United States within 45 days from the date it was accepted by the initial transporter;
- b. within 90 days from the date the waste was accepted by the initial transporter, the notifier has not received written confirmation from the recovery facility that the hazardous waste was received; or
- c. the waste is returned to the United States.

#### 3. Recordkeeping

a. Persons who meet the definition of primary exporter in LAC 33:V.109 shall keep the following records:

- i. a copy of each notification of intent to export and all written consents obtained from the competent authorities of concerned countries for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;
- ii. a copy of each annual report for a period of at least three years from the due date of the report; and
- iii. a copy of any exception reports and a copy of each confirmation of delivery (i.e., tracking documentation) sent by the recovery facility to the notifier for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable.

b. The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrative authority.

#### H. Preapproval for United States Recovery Facilities Reserved.

#### I. OECD Waste Lists

1. General. For the purposes of this Subchapter, a waste is considered hazardous under United States national procedures, and hence subject to this Subchapter, if the waste:

- a. meets the definition of hazardous waste in LAC 33:V.109; and
- b. is subject to either the manifesting requirements of this Chapter or to the universal waste management standards of LAC 33:V.Chapter 38.

2. If a waste is hazardous under Subsection I.1.a of this Section and it appears on the amber or red list, it is subject to amber-list or red-list requirements respectively.

3. If a waste is hazardous under Subsection I.1.a of this Section and it does not appear on either the amber or red list, it is subject to red-list requirements.

4. The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in Subsection B of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:

### **Chapter 13. Transporters**

#### **§1301. Applicability**

\* \* \*

[See Prior Text in A-D.2]

E. A transporter of hazardous waste must also comply with LAC 33:V.Chapter 11 if he transports hazardous waste into Louisiana from abroad or mixes hazardous wastes of different United States Department of Transportation shipping descriptions by placing them into a single container.

F. A transporter of hazardous waste subject to the manifesting requirements of LAC 33:V.Chapter 11 or subject to the waste management standards of LAC 33:V.Chapter 38 that is being imported from or exported to any of the countries listed in LAC 33:V.1113.I.1.a for purposes of recovery is subject to this Chapter and to all other relevant requirements of LAC 33:V.Chapter 11.Subchapter B including, but not limited to, LAC 33:V.1127.D for tracking documents.

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 by the Office of Waste Services, Hazardous Waste Division, LR 24:

#### **§1307. The Manifest System**

A. A transporter may not accept hazardous waste from a generator or another transporter unless it is accompanied by a manifest, signed by the generator in accordance with the provisions of LAC 33:V.1107. The transportation of any hazardous wastes without a manifest shall be deemed a violation of these regulations and the Act. In the case of exports other than those subject to LAC 33:V.Chapter 11.Subchapter B, a transporter may not accept such waste from a primary exporter or other person:

\* \* \*

[See Prior Text in A.1]

2. unless, in addition to a manifest signed in accordance with LAC 33:V.1107, such waste is also accompanied by an EPA Acknowledgment of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water [bulk shipment]). For exports of hazardous waste subject to the requirements of LAC 33:V.Chapter 11.Subchapter B, a transporter may not accept hazardous waste without a tracking document that includes all information required by LAC 33:V.1127.D.

\* \* \*

[See Prior Text in B-H]

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 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1109 (October 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **Chapter 15. Treatment, Storage, and Disposal Facilities**

#### **§1531. Required Notices**

A. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the administrative authority in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

B. The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to LAC 33:V.Chapter 11.Subchapter B must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document must be maintained at the facility for at least three years.

C. The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator is also the generator) must inform the generator in writing that he has the appropriate permit(s) for, and will accept, the waste the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record.

D. Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of LAC 33:V.Subpart 1.

E. An owner's or operator's failure to notify the new owner or operator of the requirements in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

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 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **Chapter 22. Prohibitions on Land Disposal**

#### **Subchapter A. Land Disposal Restrictions**

#### **§2201. Purpose, Scope, and Applicability**

\* \* \*

[See Prior Text in A-G.3]

4. wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this Chapter, are not prohibited if the wastes:

a. are disposed into a nonhazardous or hazardous injection well as defined in LAC 43:XVII.203.C; and

b. do not exhibit any prohibited characteristic of hazardous waste identified in LAC 33:V.4903 at the point of injection at the well head.

5. wastes that are hazardous only because they exhibit a hazardous characteristic and which are otherwise prohibited under this Chapter are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in Table 2 of this Chapter, or are D003 reactive cyanide:

a. the wastes are managed in a treatment system which subsequently discharges to waters of the United States pursuant to a permit issued under section 402 of the Clean Water Act; or

b. the wastes are treated for purposes of the pretreatment requirements of section 307 of the Clean Water Act; or

c. the wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in LAC 33:V.2221.D.1; and

d. the wastes no longer exhibit a prohibited characteristic at the point of land disposal (i.e., placement in a surface impoundment).

\* \* \*

[See Prior Text in H-I.5.c]

**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 15:378 (May 1989), amended LR 16:398 (May 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **§2203. Definitions Applicable to this Chapter**

\* \* \*

[See Prior Text in A-A.Injection Zone]

**Inorganic Metal-Bearing Waste**—a waste for which the department has established treatment standards for metal hazardous constituents and which does not otherwise contain significant organic or cyanide content as described in LAC 33:V.2207.C.1, and is specifically listed in Table 12 of this Chapter.

\* \* \*

[See Prior Text]

**Underlying Hazardous Constituent**—any constituent listed in LAC 33:V.Chapter 22.Table 7, Universal Treatment Standards, except fluoride, vanadium, and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific UTS treatment standard.

**Wastewaters**—wastes that contain less than 1 percent by weight total organic carbon (TOC) and less than 1 percent by weight total suspended solids (TSS).

\* \* \*

[See Prior Text in B]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:221 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **§2207. Dilution Prohibited as a Substitute for Treatment**

A. Except as provided in Subsection B of this Section, no generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a prohibited waste or the residual from treatment of a prohibited waste as a substitute for adequate treatment to achieve compliance with this Chapter, to circumvent the effective date of or otherwise avoid a prohibition listed in Subchapter A of this Chapter, or to circumvent a land disposal prohibition imposed by RCRA section 3004.

B. Dilution of wastes that are hazardous only because they exhibit a characteristic in a treatment system that include land-based units which treat wastes subsequently discharged to a water of the United States pursuant to a permit issued under section 402 of the Clean Water Act (CWA) or which treat wastes in a CWA-equivalent treatment system or which treat wastes for purposes of pretreatment requirements under section 307 of the CWA is not impermissible dilution for purposes of this Section unless a method other than DEACT has been specified in LAC 33:V.2223 as the treatment standard, or unless the waste is a D003 reactive cyanide wastewater or nonwastewater.

C. Combustion of the hazardous waste codes listed in Table 12 of this Chapter is prohibited, unless the waste, at the point of generation, or after any bona fide treatment, such as cyanide destruction prior to combustion, can be demonstrated to comply with one or more of the following criteria (unless otherwise specifically prohibited from combustion):

1. the waste contains hazardous organic constituents or cyanide at levels exceeding the constituent-specific treatment standard found in Table 7 of this Chapter;

2. the waste consists of organic, debris-like materials (e.g., wood, paper, plastic, or cloth) contaminated with an inorganic metal-bearing hazardous waste;

3. the waste, at point of generation, has reasonable heating value, such as greater than or equal to 5,000 BTU per pound;

4. the waste is cogenerated with wastes for which combustion is a required method of treatment;

5. the waste is subject to federal and/or state requirements necessitating reduction of organics (including biological agents); or

6. the waste contains greater than 1 percent Total Organic Carbon (TOC).

**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 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **§2221. Schedule of Wastes Identified or Listed After November 8, 1984**

\* \* \*

[See Prior Text in A-E.5]

F. **Waste-Specific Prohibitions: Spent Aluminum Potliners and Reactive and Carbamate Wastes**

1. Effective March 20, 1998, the wastes specified as EPA Hazardous Waste Numbers K156-K159, K161, P127,

P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, U407, and U409-U411 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal.

2. Effective March 20, 1998, the wastes identified in LAC 33:V.4903.D as D003 that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA) or that inject in Class I deep wells regulated under the Safe Drinking Water Act (SDWA) or that are zero dischargers that engage in CWA-equivalent treatment before ultimate land disposal, are prohibited from land disposal. This prohibition does not apply to unexploded ordnance and other explosive devices, which have been the subject of an emergency response. Such D003 wastes are prohibited unless they meet the treatment standard of DEACT before land disposal (see LAC 33:V.2223).

3. Effective March 20, 1998, the wastes specified in LAC 33:V.4901.C as EPA Hazardous Waste Number K088 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal.

4. On April 8, 1998, radioactive wastes mixed with K088, K156-K161, P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, U407, and U409-U411 are also prohibited from land disposal. In addition, soil and debris contaminated with these radioactive mixed wastes are prohibited from land disposal.

5. Between March 20, 1998, and April 8, 1998, the wastes included in Subsection F.1, 3, and 4 of this Section may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in LAC 33:V.2239.I.2.

6. The requirements of Subsection F.1-4 of this Section do not apply if:

- a. the wastes meet the applicable treatment standards specified in this Chapter;
- b. persons have been granted an exemption from a prohibition pursuant to a petition under LAC 33:V.2241, with respect to those wastes and units covered by the petition;
- c. the wastes meet the applicable alternate treatment standards established pursuant to a petition granted under LAC 33:V.2231; or
- d. persons have been granted an extension to the effective date of a prohibition pursuant to LAC 33:V.2239, with respect to these wastes covered by the extension.

7. To determine whether a hazardous waste identified in this Section exceeds the applicable treatment standards specified in LAC 33:V.2223, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable treatment levels, the waste is prohibited from land disposal and all

requirements of this Chapter are applicable, except as otherwise specified.

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 15:378 (May 1989), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **§2223. Applicability of Treatment Standards**

A. A prohibited waste identified in the LAC 33:V.Chapter 22.Table 2 may be land disposed only if it meets the requirements found in Table 2. For each waste, the table identifies one of the three types of treatment standard requirements:

\* \* \*

[See Prior Text in A.1-B]

C. For characteristic wastes (D001-D003, and D012-D043) that are subject to treatment standards in LAC 33:V.Chapter 22.Table 2, "Treatment Standards for Hazardous Wastes," all underlying hazardous constituents (as defined in LAC 33:V.2203) must meet Universal Treatment Standards, found in LAC 33:V.Chapter 22.Table 7, prior to land disposal as defined in LAC 33:V.2203.

\* \* \*

[See Prior Text in D]

E. Between August 26, 1996, and August 26, 1997, the treatment standards for the wastes specified as EPA Hazardous Waste Numbers K156-K159, K161,P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U278-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U404, and U409-U411 and soil contaminated with these wastes were satisfied by either meeting the constituent concentrations presented in LAC 33:V.Chapter 22.Table 2, or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST at LAC 33:V.Chapter 22.Table 3, for nonwastewaters; and biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at LAC 33:V.Chapter 22.Table 3, for wastewaters.

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 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 22:819 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **§2235. Landfills and Surface Impoundments Disposal Restrictions**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 22:22

(January 1996), repealed by the Office of Waste Services, Hazardous Waste Division, LR 24:

**§2245. Generators' Waste Analysis, Recordkeeping, and Notice Requirements**

A. Except as specified in LAC 33:V.2213, if a generator's waste is listed in LAC 33:V.Chapter 49, the generator must test his or her waste or test an extract using Method 1311, the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference at LAC 33:V.110, or use knowledge of the waste to determine if the waste is prohibited from land disposal under this Chapter. Except as specified in LAC 33:V.2213, if a generator's waste exhibits one or more of the characteristics set out at LAC 33:V.4903, the generator must test an extract using Method 1311, the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference at LAC 33:V.110, or use knowledge of the waste, to determine if the waste is prohibited from land disposal under this Chapter. If the generator determines that his waste exhibits the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by CMBST or RORGS of Table 3 of this Chapter) and/or the characteristic of corrosivity (D002) and/or reactivity (D003) and/or the characteristic of organic toxicity (D012-D043), and the waste is prohibited under LAC 33:V.2221.D-F, the generator must determine the underlying hazardous constituents, as defined in LAC 33:V.2203, in the D001, D002, D003, or D012-D043 waste.

\* \* \*

[See Prior Text in B-B.1]

2. the waste constituents that the person treating the waste will monitor, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, D003, and D012-D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in LAC 33:V.2203) and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

\* \* \*

[See Prior Text in B.3-4]

5. for hazardous debris, the contaminants subject to treatment as provided by LAC 33:V.2230 and the following statement: "This hazardous debris is subject to the alternative treatment standards of LAC 33:V.2230."

C. If a generator determines that he or she is managing a waste prohibited under this Chapter and determines that the waste can be land disposed without further treatment, with each shipment of waste he or she must submit to the treatment, storage, or land disposal facility a notice and certification stating that the waste meets the applicable treatment standards set forth in LAC 33:V.Chapter 22.Subchapter A and the applicable prohibitions set forth in LAC 33:V.2213. Generators of hazardous debris that is excluded from the definition of hazardous waste under LAC 33:V.109 (i.e., debris that the administrative authority has determined does not contain hazardous waste), however, are not subject to these notification and certification requirements.

\* \* \*

[See Prior Text in C.1-1.a]

b. the waste constituents that the person treating the waste will monitor, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, D003, and D012-D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in LAC 33:V.2203) and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

\* \* \*

[See Prior Text in C.1.c-D.1]

2. the waste constituents that the person treating the waste will monitor, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, D003, and D012-D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in LAC 33:V.2203) and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

\* \* \*

[See Prior Text in D.3-K]

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 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 22:1130 (November 1996), LR 23:565 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

**§2246. Special Rules Regarding Wastes That Exhibit a Characteristic**

A. The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under this Chapter. For purposes of this Chapter, the waste will carry the waste code for any applicable listing under LAC 33:V.4901. In addition, the waste will carry one or more of the waste codes under LAC 33:V.4903, where the waste exhibits a characteristic, except in the case when the treatment standard for the waste code listed in LAC 33:V.4901 operates in lieu of the standard for the waste code under LAC 33:V.4903, as specified in LAC 33:V.2246.B. If the generator determines that his waste displays a hazardous characteristic (and the waste is not a D004-D011 waste, a High TOC D001, or is not treated by CMBST, or RORGS of LAC 33:V.Chapter 22.Table 3), the generator must determine what underlying hazardous constituents (as defined in LAC 33:V.2203.A) are reasonably expected to be present above the universal treatment standards found in LAC 33:V.2233.

\* \* \*

[See Prior Text in B-E.3.c]

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 16:1057 (December 1990), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:



**§2247. Owners or Operators of Treatment or Disposal Facilities: Testing, Waste Minimization, Recordkeeping, and Notice Requirements**

\* \* \*

[See Prior Text in A-B.1]

2. the waste constituents to be monitored, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, D003, and D012-D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in LAC 33:V.2203) and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

\* \* \*

[See Prior Text in B.3-C.3]

4. For characteristic wastes D001, D002, D003, and D012-D043 that are subject to the treatment standards in LAC 33:V.2223 (other than those expressed as a required method of treatment), that are reasonably expected to contain underlying hazardous constituents as defined in LAC 33:V.2203, that are treated on-site to remove the hazardous characteristic and are then sent off-site for treatment of underlying hazardous constituents, the certification must state the following:

"I certify under penalty of law that the waste has been treated in accordance with the requirements of LAC 33:V.2223 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet

universal treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

5. For characteristic wastes D001, D002, D003, and D012-D043 that contain underlying hazardous constituents, as defined in LAC 33:V.2203.A, and that are treated on-site to remove the hazardous characteristic and to treat underlying hazardous constituents to levels in LAC 33:V.2233.Universal Treatment Standards, the certification must state the following:

"I certify under penalty of law that the waste has been treated in accordance with the requirements of LAC 33:V.2223 to remove the hazardous characteristic and that underlying hazardous constituents, as defined in LAC 33:V.2203.A, have been treated on-site to meet the LAC 33:V.2233.Universal Treatment Standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

\* \* \*

[See Prior Text in D-H]

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 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 23:566 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

**Appendix**

**Table 2. Treatment Standards for Hazardous Wastes**

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters	Nonwastewaters
		Common Name	CAS <sup>2</sup> Number	Concentration mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Concentration in mg/kg <sup>5</sup> unless noted as "mg/l TCLP" or Technology Code <sup>4</sup>
D001 <sup>9</sup>	Ignitable Characteristic Wastes, except for the LAC 33:V.4903.B.1 High TOC Subcategory	NA	NA	DEACT and meet LAC 33:V.2233 standards <sup>8</sup> ; or RORGS; or CMBST	DEACT and meet LAC 33:V.2233 standards <sup>8</sup> ; or RORGS; or CMBST
	High TOC Ignitable Characteristic Liquids Subcategory based on LAC 33:V 4903.B.1. - Greater than or equal to 10 percent total organic carbon. (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	RORGS; or CMBST
D002 <sup>9</sup>	Corrosive Characteristic Wastes	NA	NA	DEACT and meet LAC 33:V.2233 standards <sup>8</sup>	DEACT and meet LAC 33:V.2233 standards <sup>8</sup>

\* \* \*

[See Prior Text in D002, D004-D011 Radioactive High Level Wastes]

D003 <sup>9</sup>	Reactive Sulfides Subcategory based on LAC 33:V.4903.D.5.	NA	NA	DEACT	DEACT
	Explosives Subcategory based on LAC 33:V.4903.D.6, 7, and 8.	NA	NA	DEACT and meet LAC 33:V.2233 standards <sup>8</sup>	DEACT and meet LAC 33:V.2233 standards <sup>8</sup>
	Unexploded ordnance and other explosive devices that have been the subject of emergency response.	NA	NA	DEACT	DEACT
	Other Reactives Subcategory based on LAC 33:V.4903.D.1.	NA	NA	DEACT and meet LAC 33:V.2233 standards <sup>8</sup>	DEACT and meet LAC 33:V.2233 standards <sup>8</sup>
	Water Reactive Subcategory based on LAC 33:V.4903.D.2, 3, and 4. (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	DEACT and meet LAC 33:V.2233 standards <sup>8</sup>
	Reactive Cyanides Subcategory based on LAC 33:V.4903.D.5.	Cyanides (Total) <sup>7</sup>	57-12-5	Reserved	590
Cyanides (Amenable) <sup>7</sup>		57-12-5	0.86	30	
* * *					
[See Prior Text in D004 - D011]					
D012 <sup>9</sup>	Wastes that are TC for Endrin based on the TCLP in SW846 Method 1311.	Endrin	72-20-8	BIODG; or CMBST	0.13 and meet LAC 33:V.2233 standards <sup>8</sup>
		Endrin aldehyde	7421-93-4	BIODG; or CMBST	0.13 and meet LAC 33:V.2233 standards <sup>8</sup>
D013 <sup>9</sup>	Wastes that are TC for Lindane based on the TCLP in SW846 Method 1311.	alpha-BHC	319-84-6	CARB; or CMBST	0.066 and meet LAC 33:V.2233 standards <sup>8</sup>
		beta-BHC	319-85-7	CARB; or CMBST	0.066 and meet LAC 33:V.2233 standards <sup>8</sup>
		delta-BHC	319-86-8	CARB; or CMBST	0.066 and meet LAC 33:V.2233 standards <sup>8</sup>
		gamma-BHC (Lindane)	58-89-9	CARB; or CMBST	0.066 and meet LAC 33:V.2233 standards <sup>8</sup>
D014 <sup>9</sup>	Wastes that are TC for Methoxychlor based on the TCLP in SW846 Method 1311.	Methoxychlor	72-43-5	WETOX or CMBST	0.18 and meet LAC 33:V.2233 standards <sup>8</sup>
D015 <sup>9</sup>	Wastes that are TC for Toxaphene based on the TCLP in SW846 Method 1311.	Toxaphene	8001-35-2	BIODG or CMBST	2.6 and meet LAC 33:V.2233 standards <sup>8</sup>
D016 <sup>9</sup>	Wastes that are TC for 2,4-D (2,4-Dichlorophenoxyacetic acid) based on the TCLP in SW846 Method 1311.	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	CHOXD, BIODG, or CMBST	10 and meet LAC 33:V.2233 standards <sup>8</sup>
D017 <sup>9</sup>	Wastes that are TC for 2,4,5-TP (Silvex) based on the TCLP in SW846 Method 1311.	2,4,5-TP (Silvex)	93-72-1	CHOXD or CMBST	7.9 and meet LAC 33:V.2233 standards <sup>8</sup>

D018 <sup>9</sup>	Wastes that are TC for Benzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Benzene	71-43-2	0.14 and meet LAC 33:V.2233 standards <sup>8</sup>	10 and meet LAC 33:V.2233 standards <sup>8</sup>
D019 <sup>9</sup>	Wastes that are TC for Carbon tetrachloride based on the TCLP in SW846 Method 1311.	Carbon tetrachloride	56-23-5	0.057 and meet LAC 33:V.2233 standards <sup>8</sup>	6.0 and meet LAC 33:V.2233 standards <sup>8</sup>
D020 <sup>9</sup>	Wastes that are TC for Chlordane based on the TCLP in SW846 Method 1311.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033 and meet LAC 33:V.2233 standards <sup>8</sup>	0.26 and meet LAC 33:V.2233 standards <sup>8</sup>
D021 <sup>9</sup>	Wastes that are TC for Chlorobenzene based on the TCLP in SW846 Method 1311 .	Chlorobenzene	108-90-7	0.057 and meet LAC 33:V.2233 standards <sup>8</sup>	6.0 and meet LAC 33:V.2233 standards <sup>8</sup>
D022 <sup>9</sup>	Wastes that are TC for Chloroform based on the TCLP in SW846 Method 1311.	Chloroform	67-66-3	0.046 and meet LAC 33:V.2233 standards <sup>8</sup>	6.0 and meet LAC 33:V.2233 standards <sup>8</sup>
D023 <sup>9</sup>	Wastes that are TC for o-Cresol based on the TCLP in SW846 Method 1311.	o-Cresol	95-48-7	0.11 and meet LAC 33:V.2233 standards <sup>8</sup>	5.6 and meet LAC 33:V.2233 standards <sup>8</sup>
D024 <sup>9</sup>	Wastes that are TC for m-Cresol based on the TCLP in SW846 Method 1311.	m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77 and meet LAC 33:V.2233 standards <sup>8</sup>	5.6 and meet LAC 33:V.2233 standards <sup>8</sup>
D025 <sup>9</sup>	Wastes that are TC for p-Cresol based on the TCLP in SW846 Method 1311.	p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77 and meet LAC 33:V.2233 standards <sup>8</sup>	5.6 and meet LAC 33:V.2233 standards <sup>8</sup>
D026 <sup>9</sup>	Wastes that are TC for Cresols (Total) based on the TCLP in SW846 Method 1311.	Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88 and meet LAC 33:V.2233 standards <sup>8</sup>	11.2 and meet LAC 33:V.2233 standards <sup>8</sup>
D027 <sup>9</sup>	Wastes that are TC for p-Dichlorobenzene based on the TCLP in SW846 Method 1311.	p-Dichlorobenzene (1,4-Dichlorobenzene)	106-46-7	0.090 and meet LAC 33:V.2233 standards <sup>8</sup>	6.0 and meet LAC 33:V.2233 standards <sup>8</sup>
D028 <sup>9</sup>	Wastes that are TC for 1,2-Dichloroethane based on the TCLP in SW846 Method 1311.	1,2-Dichloroethane	107-06-2	0.21 and meet LAC 33:V.2233 standards <sup>8</sup>	6.0 and meet LAC 33:V.2233 standards <sup>8</sup>
D029 <sup>9</sup>	Wastes that are TC for 1,1-Dichloroethylene based on the TCLP in SW846 Method 1311.	1,1-Dichloroethylene	75-35-4	0.025 and meet LAC 33:V.2233 standards <sup>8</sup>	6.0 and meet LAC 33:V.2233 standards <sup>8</sup>
D030 <sup>9</sup>	Wastes that are TC for 2,4-Dinitrotoluene based on the TCLP in SW846 Method 1311.	2,4-Dinitrotoluene	121-14-2	0.32 and meet LAC 33:V.2233 standards <sup>8</sup>	140 and meet LAC 33:V.2233 standards <sup>8</sup>

D031 <sup>9</sup>	Wastes that are TC for Heptachlor based on the TCLP in SW846 Method 1311.	Heptachlor	76-44-8	0.0012 and meet LAC 33:V.2233 standards <sup>8</sup>	0.066 and meet LAC 33:V.2233 standards <sup>8</sup>
		Heptachlor epoxide	1024-57-3	0.016 and meet LAC 33:V.2233 standards <sup>8</sup>	0.066 and meet LAC 33:V.2233 standards <sup>8</sup>
D032 <sup>9</sup>	Wastes that are TC for Hexachlorobenzene based on the TCLP in SW846 Method 1311.	Hexachlorobenzene	118-74-1	0.055 and meet LAC 33:V.2233 standards <sup>8</sup>	10 and meet LAC 33:V.2233 standards <sup>8</sup>
D033 <sup>9</sup>	Wastes that are TC for Hexachlorobutadiene based on the TCLP in SW846 Method 1311.	Hexachlorobutadiene	87-68-3	0.055 and meet LAC 33:V.2233 standards <sup>8</sup>	5.6 and meet LAC 33:V.2233 standards <sup>8</sup>
D034 <sup>9</sup>	Wastes that are TC for Hexachloroethane based on the TCLP in SW846 Method 1311.	Hexachloroethane	67-72-1	0.055 and meet LAC 33:V.2233 standards <sup>8</sup>	30 and meet LAC 33:V.2233 standards <sup>8</sup>
D035 <sup>9</sup>	Wastes that are TC for Methyl ethyl ketone based on the TCLP in SW846 Method 1311.	Methyl ethyl ketone	78-93-3	0.28 and meet LAC 33:V.2233 standards <sup>8</sup>	36 and meet LAC 33:V.2233 standards <sup>8</sup>
D036 <sup>9</sup>	Wastes that are TC for Nitrobenzene based on the TCLP in SW846 Method 1311.	Nitrobenzene	98-95-3	0.068 and meet LAC 33:V.2233 standards <sup>8</sup>	14 and meet LAC 33:V.2233 standards <sup>8</sup>
D037 <sup>9</sup>	Wastes that are TC for Pentachlorophenol based on the TCLP in SW846 Method 1311.	Pentachlorophenol	87-86-5	0.089 and meet LAC 33:V.2233 standards <sup>8</sup>	7.4 and meet LAC 33:V.2233 standards <sup>8</sup>
D038 <sup>9</sup>	Wastes that are TC for Pyridine based on the TCLP in SW846 Method 1311.	Pyridine	110-86-1	0.014 and meet LAC 33:V.2233 standards <sup>8</sup>	16 and meet LAC 33:V.2233 standards <sup>8</sup>
D039 <sup>9</sup>	Wastes that are TC for Tetrachloroethylene based on the TCLP in SW846 Method 1311.	Tetrachloroethylene	127-18-4	0.056 and meet LAC 33:V.2233 standards <sup>8</sup>	6.0 and meet LAC 33:V.2233 standards <sup>8</sup>
D040 <sup>9</sup>	Wastes that are TC for Trichloroethylene based on the TCLP in SW846 Method 1311.	Trichloroethylene	79-01-6	0.054 and meet LAC 33:V.2233 standards <sup>8</sup>	6.0 and meet LAC 33:V.2233 standards <sup>8</sup>
D041 <sup>9</sup>	Wastes that are TC for 2,4,5-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,5-Trichlorophenol	95-95-4	0.18 and meet LAC 33:V.2233 standards <sup>8</sup>	7.4 and meet LAC 33:V.2233 standards <sup>8</sup>
D042 <sup>9</sup>	Wastes that are TC for 2,4,6-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,6-Trichlorophenol	88-06-2	0.035 and meet LAC 33:V.2233 standards <sup>8</sup>	7.4 and meet LAC 33:V.2233 standards <sup>8</sup>
D043 <sup>9</sup>	Wastes that are TC for Vinyl chloride based on the TCLP in SW846 Method 1311.	Vinyl chloride	75-01-4	0.27 and meet LAC 33:V.2233 standards <sup>8</sup>	6.0 and meet LAC 33:V.2233 standards <sup>8</sup>
*** [See Prior Text in F001 - K087]					

K088	Spent potliners from primary aluminum reduction.	Acenaphthene	83-32-9	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene	205-99-2	0.11	6.8
		Benzo(k)fluoranthene	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Indeno (1,2,3-c,d)pyrene	193-39-5	0.0055	3.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Barium	7440-39-3	1.2	7.6 mg/l TCLP
		Beryllium	7440-41-7	0.82	0.014 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
		Cyanide (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanide (Amenable) <sup>7</sup>	57-12-5	0.86	30
Fluoride	16984-48-8	35	48 mg/l TCLP		
* * *					
[See Prior Text in K093 -K151]					

K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. <sup>10</sup>	Acetonitrile	75-05-8	5.6	38
		Acetophenone	96-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbaryl	63-25-2	0.006	0.14
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl	16752-77	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
Toluene	108-88-3	0.080	10		
Triethylamine	121-44-8	0.081	1.5		
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. <sup>10</sup>	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		o-Phenylenediamine	95-54-5	0.056	5.6
		Pyridine	110-86-1	0.014	16
Triethylamine	121-44-8	0.081	1.5		

K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. <sup>10</sup>	Benomyl	17804- 35-2	0.056	14		
		Benzene	71-43-2	0.14	10		
		Carbenzadim	10605-21-7	0.056	1.4		
		Carbofuran	1563-66-2	0.006	0.14		
		Carbosulfan	55285-14-8	0.028	1.4		
		Chloroform	67-66-3	0.046	6.0		
		Methylene chloride	75-09-2	0.089	30		
K159	Organics from the treatment of thiocarbamate wastes. <sup>10</sup>	Phenol	108-95-2	0.039	6.2		
		Benzene	71-43-2	0.14	10		
		Butylate	2008-41-5	0.042	1.4		
		EPTC (Eptam)	759-94-4	0.042	1.4		
		Molinate	2212-67-1	0.042	1.4		
		Pebulate	1114-71-2	0.042	1.4		
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust, and floor sweepings from the production of dithiocarbamate acids and their salts. <sup>10</sup>	Vernolate	1929-77-7	0.042	1.4		
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP		
		Arsenic	7440-38-2	1.9	5.0 mg/l TCLP		
		Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP		
		Dithiocarbamates (total)	NA	0.028	28		
		Lead	7439-92-1	0.69	0.37 mg/l TCLP		
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP		
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP		
		* * *					
		[See Prior Text in P001 - P123]					
		P127	Carbofuran <sup>10</sup>	Carbofuran	1563-66-2	0.006	0.14
		P128	Mexacarbate <sup>10</sup>	Mexacarbate	315-18-4	0.056	1.4
P185	Tirpate <sup>10</sup>	Tirpate	26419-73-8	0.056	0.28		
P188	Physostigmine salicylate <sup>10</sup>	Physostigmine salicylate	57-64-7	0.056	1.4		
P189	Carbosulfan <sup>10</sup>	Carbosulfan	55285-14-8	0.028	1.4		
P190	Metolcarb <sup>10</sup>	Metolcarb	1129-41-5	0.056	1.4		
P191	Dimetilan <sup>10</sup>	Dimelitan	644-64-4	0.056	1.4		
P192	Isolan <sup>10</sup>	Isolan	119-38-0	0.056	1.4		

P194	Oxamyl <sup>10</sup>	Oxamyl	23135-22-0	0.056	0.28
P196	Manganese dimethyldithiocarbamate <sup>10</sup>	Dithiocarbamates (total)	NA	0.028	28
P197	Formparanate <sup>10</sup>	Formparanate	17702-57-7	0.056	1.4
P198	Formetanate hydrochloride <sup>10</sup>	Formetanate hydrochloride	23422-53-9	0.056	1.4
P199	Methiocarb <sup>10</sup>	Methiocarb	2032-65-7	0.056	1.4
P201	Promecarb <sup>10</sup>	Promecarb	2631-37-0	0.056	1.4
P202	m-Cumenyl methylcarbamate <sup>10</sup>	m-Cumenyl methylcarbamate	64-00-6	0.056	1.4
P203	Aldicarb sulfone <sup>10</sup>	Aldicarb sulfone	1646-88-4	0.056	0.28
P204	Physostigmine <sup>10</sup>	Physostigmine	57-47-6	0.056	1.4
P205	Ziram <sup>10</sup>	Dithiocarbamates (total)	NA	0.028	28
*** [See Prior Text in U001 - U249]					
U271	Benomyl <sup>10</sup>	Benomyl	17804-35-2	0.056	1.4
U278	Bendiocarb <sup>10</sup>	Bendiocarb	22781-23-8	0.056	1.4
U279	Carbaryl <sup>10</sup>	Carbaryl	63-25-2	0.006	0.14
U280	Barban <sup>10</sup>	Barban	101-27-9	0.056	1.4
*** [See Prior Text in U328 - U359]					
U364	Bendiocarb phenol <sup>10</sup>	Bendiocarb phenol	22961-82-6	0.056	1.4
U367	Carbofuran phenol <sup>10</sup>	Carbofuran phenol	1563-38-8	0.056	1.4
U372	Carbendazim <sup>10</sup>	Carbendazim	10605-21-7	0.056	1.4
U373	Propham <sup>10</sup>	Propham	122-42-9	0.056	1.4
U387	Prosulfocarb <sup>10</sup>	Prosulfocarb	52888-80-9	0.042	1.4
U389	Triallate <sup>10</sup>	Triallate	2303-17-5	0.042	1.4
U394	A2213 <sup>10</sup>	A2213	30558-43-1	0.042	1.4
U395	Diethylene glycol, dicarbamate <sup>10</sup>	Diethylene glycol, dicarbamate	5952-26-1	0.056	1.4
U404	Triethylamine <sup>10</sup>	Triethylamine	101-44-8	0.081	1.5
U409	Thiophanate-methyl <sup>10</sup>	Thiophanate-methyl	23564-05-8	0.056	1.4
U410	Thiodicarb <sup>10</sup>	Thiodicarb	59669-26-0	0.019	1.4
U411	Propoxur <sup>10</sup>	Propoxur	114-26-1	0.056	1.4

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[See Prior Text in Note 1 - Note 7]

<sup>8</sup> These wastes, when rendered nonhazardous and then subsequently managed in CWA or CWA-equivalent systems, are not subject to treatment standards. (See LAC 33:V.2201.G.4 and G.5.)

<sup>9</sup> These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well, are not subject to treatment standards. (See LAC 33:V.Chapter 22.Subchapter B.)

<sup>10</sup> Between August 26, 1996, and August 26, 1997, the treatment standards for this waste were satisfied in 40 CFR 268.40(g) by either meeting the

constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at LAC 33:V.Chapter 22.Table 3, for nonwastewaters; and biodegradation, as defined by the technology code BIODG, carbon adsorption, as defined by the technology code CARBN, chemical oxidation, as defined by the technology code CHOXD, or combustion, as defined as technology code CMBST at LAC 33:V.Chapter 22,Table 3, for wastewaters. *Note:* NA means not applicable.

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[See Prior Text in Table 3 - Table 6]



Table 7. Universal Treatment Standards			
Regulated Constituent-Common Name	CAS <sup>1</sup> Number	Wastewater Standard Concentration in mg/l <sup>2</sup>	Nonwastewater Standard Concentration in mg/kg <sup>3</sup> unless noted as "mg/l TCLP"
A2213 <sup>6</sup>	30558-43-1	0.042	1.4
*** [See Prior Text in Acenaphthylene - Acrylonitrile]			
Aldicarb sulfone <sup>6</sup>	1646-88-4	0.056	0.28
*** [See Prior Text in Aldrin - gamma - BHC]			
Barban <sup>6</sup>	101-27-9	0.056	1.4
Bendiocarb <sup>6</sup>	22781-23-3	0.056	1.4
Bendiocarb phenol <sup>6</sup>	22961-82-6	0.056	1.4
Benomyl <sup>6</sup>	17804-35-2	0.056	1.4
*** [See Prior Text in Benzene -n-Butyl alcohol]			
Butylate <sup>6</sup>	2008-41-5	0.042	1.4
*** [See Prior Text in Butyl benzyl phthalate - 2-sec-Butyl-4,6-dinitrophenol/Dinoseb]			
Carbaryl <sup>6</sup>	63-25-2	0.006	0.14
Carbenzadim <sup>6</sup>	10605-21-7	0.056	1.4
Carbofuran <sup>6</sup>	1563-66-2	0.006	0.14
Carbofuran phenol <sup>6</sup>	1563-38-8	0.056	1.4
*** [See Prior Text in Carbon disulfide - Carbon tetrachloride]			
Carbosulfan <sup>6</sup>	55285-14-8	0.028	1.4
*** [See Prior Text in Chlordane (alpha and gamma isomers) - p-Creosol]			
m-Cumenyl methylcarbamate <sup>6</sup>	64-00-6	0.056	1.4
*** [See Prior Text in Cyclohexanone -Diethyl phthalate]			
Diethylene glycol, dicarbamate <sup>6</sup>	5952-26-1	0.056	1.4
*** [See Prior Text in 2-4-Dimethyl phenol - Dimethyl phthalate]			
Dimetilan <sup>6</sup>	644-64-4	0.056	1.4
*** [See Prior Text in Di-n-butyl phthalate - Disulfoton]			
Dithiocarbamates (total) <sup>6</sup>	137-30-4	0.028	28
*** [See Prior Text in Endosulfan I - Flourene]			
Formetanate hydrochloride <sup>6</sup>	23422-53-9	0.056	1.4
Formparanate <sup>6</sup>	17702-57-7	0.056	1.4
*** [See Prior Text in Heptochlor - Isodrin]			
Isolan <sup>6</sup>	119-38-0	0.056	1.4

*** [See Prior Text in Isosafrole - Methapyrilene]			
Methiocarb <sup>6</sup>	2032-65-7	0.056	1.4
Methomyl <sup>6</sup>	16752-77-5	0.028	0.14
*** [See Prior Text in Methoxychlor - Methyl parathion]			
Metolcarb <sup>6</sup>	1129-41-5	0.056	1.4
Mexacarbate <sup>6</sup>	315-18-4	0.056	1.4
Molinate <sup>6</sup>	2212-67-1	0.042	1.4
*** [See Prior Text in Napthalene - N-Nitrosopyrrolidine]			
Oxamyl <sup>6</sup>	23135-22-0	0.056	0.28
*** [See Prior Text in Parathion - Total PCBs]			
Pebulate <sup>6</sup>	1114-71-2	0.042	1.4
*** [See Prior Text in Pentachlorobenzene - Phenol]			
o-Phenylenediamine <sup>6</sup>	95-54-5	0.056	5.6
*** [See Prior Text in Phorate - Phthalic anhydride]			
Physostigmine <sup>6</sup>	57-47-6	0.056	1.4
Physostigmine salicylate <sup>6</sup>	57-64-7	0.056	1.4
Promecarb <sup>6</sup>	2631-37-0	0.056	1.4
*** [See Prior Text in Pronamide]			
Propham <sup>6</sup>	112-42-9	0.056	1.4
Propoxur <sup>6</sup>	114-26-1	0.056	1.4
Prosulfocarb <sup>6</sup>	52888-80-9	0.042	1.4
*** [See Prior Text in Pyrene - 2,3,4,6-Tetrachlorophenol]			
Thiodicarb <sup>6</sup>	59669-26-0	0.019	1.4
Thiophanate-methyl <sup>6</sup>	23564-05-8	0.056	1.4
Tirpate <sup>6</sup>	26419-73-8	0.056	0.28
*** [See Prior Text in Toluene - Toxaphene]			
Triallate <sup>6</sup>	2303-17-5	0.042	1.4
*** [See Prior Text in Bromoform (Tribromomethane) - Cyanides (Amenable)]			
Fluoride <sup>5</sup>	16964-48-8	35	NA
*** [See Prior Text in Lead - Thallium]			
Vanadium <sup>5</sup>	7440-62-2	4.3	0.23 mg/l TCLP
*** [See Prior Text in Zinc]			

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[See Prior Text Note 1 - Note 4]

<sup>5</sup> These constituents are not "underlying hazardous constituents" in characteristic wastes, according to the definition at LAC 33:V.2203.A.

<sup>6</sup> Between August 26, 1996 and August 26, 1997, these constituents were not "underlying hazardous constituents" (under 40 CFR 268.2(i)) as defined in LAC 33:V.2203.A.

Note: NA means not applicable

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[See Prior Text in Table 8 - Table 11.Certification Statements A-G]

Table 12. Metal-Bearing Wastes Prohibited From Dilution in a Combustion Unit According to LAC 33:V.2207.C <sup>1</sup>	
Waste code	Waste description
D004	Toxicity characteristic for arsenic.
D005	Toxicity characteristic for barium.
D006	Toxicity characteristic for cadmium.
D007	Toxicity characteristic for chromium.
D008	Toxicity characteristic for lead.
D009	Toxicity characteristic for mercury.
D010	Toxicity characteristic for selenium.
D011	Toxicity characteristic for silver.
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zincplating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.
F007	Spent cyanide plating bath solutions from electroplating operations.
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
F010	Quenching bath residues from oil baths from metal treating operations where cyanides are used in the process.
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.
F012	Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process.
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum car washing when such phosphating is an exclusive conversion coating process.
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.
K003	Wastewater treatment sludge from the production of molybdate orange pigments.
K004	Wastewater treatment sludge from the production of zinc yellow pigments.
K005	Wastewater treatment sludge from the production of chrome green pigments.
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).
K007	Wastewater treatment sludge from the production of iron blue pigments.
K008	Oven residue from the production of chrome oxide green pigments.

K061	Emission control dust/sludge from the primary production of steel in electric furnaces.
K069	Emission control dust/sludge from secondary lead smelting.
K071	Brine purification muds from the mercury cell processes in chlorine production, where separately prepurified brine is not used.
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.
K106	Sludges from the mercury cell processes for making chlorine.
P010	Arsenic acid H <sub>3</sub> AsO <sub>4</sub> .
P011	Arsenic oxide As <sub>2</sub> O <sub>5</sub> .
P012	Arsenic trioxide.
P013	Barium cyanide.
P015	Beryllium.
P029	Copper cyanide Cu(CN).
P074	Nickel cyanide Ni(CN) <sub>2</sub> .
P087	Osmium tetroxide.
P099	Potassium silver cyanide.
P104	Silver cyanide.
P113	Thallic oxide.
P114	Thallium (I) selenite.
P115	Thallium (I) sulfate.
P119	Ammonium vanadate.
P120	Vanadium oxide V <sub>2</sub> O <sub>5</sub> .
P121	Zinc cyanide.
U032	Calcium chromate.
U145	Lead phosphate.
U151	Mercury.
U204	Selenious acid.
U205	Selenium disulfide.
U216	Thallium (I) chloride.
U217	Thallium (I) nitrate.
<sup>1</sup> A combustion unit is defined as any thermal technology subject to LAC 33:V.Chapter 30, Chapter 31, and/or Chapter 43.Subchapter N.	

**Chapter 25. Landfills**  
**§2515. Special Requirements for Bulk and Containerized Liquids**

\* \* \*

[See Prior Text in A-F.2]

a. The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a)-Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi.

b. The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76

(1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria.

c. The sorbent material is determined to be nonbiodegradable under OECD test 301B: [CO<sub>2</sub> Evolution (Modified Sturm Test)].

d. Effective March 20, 1998, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the administrative authority, or the administrative authority determines, that:

i. the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

ii. placement in such owner's or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in LAC 33:V.109.)

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, in LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:821 (September 1996), amended by the Office of the Secretary, LR 23:299 (March 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

**Chapter 31. Incinerators**

**§3105. Applicability**

\* \* \*

[See Prior Text in A-E]

Table 1. Hazardous Constituents			
Common Name	Chemical Abstracts Name	Chemical Abstracts Number	Hazardous Waste Number
* * * [See Prior Text in Acetonitrile - Beryllium compounds, N.O.S.¹]			
Bis (pentamethylene)-thiuram tetrasulfide	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-	120-54-7	U400
* * * [See Prior Text in Bromoacetone - Butyl benzyl phthalate]			
Butylate	Carbamothioic acid, bis (2-methylpropyl)-, S-ethyl ester	2008-41-5	U392
* * * [See Prior Text in Cacodylic acid - Copper Cyanide]			
Copper dimethyl-dithiocarbamate	Copper, bis(dimethylcarbamodithioato-S,S')-,	137-29-1	U393
* * * [See Prior Text in Creosote - Cycasin]			
Common Name	Chemical Abstracts Name	Chemical Abstracts Number	Hazardous Waste Number
Cycloate	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester	1134-23-2	U386
* * * [See Prior Text in 2-Cyclohexyl-4,6- dinitrophenol - Daunomycin]			
Dazomet	2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl	533-74-4	U366
* * * [See Prior Text in DDD - Di-n-propylnitrosamine]			
Disulfiram	Thioperoxydicarbonic diamide, tetraethyl	97-77-8	U403
* * * [See Prior Text in Disulfoton - Epinephrine]			
EPTC	Carbamothioic acid, dipropyl-, S-ethyl ester	759-94-4	U390
* * * [See Prior Text in Ethyl carbamate (urethane) - Ethyl methanesulfonate]			

* * *			
[See Prior Text in Acetonitrile - Beryllium compounds, N.O.S. <sup>1</sup> ]			
Bis (pentamethylene)-thiuram tetrasulfide	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-	120-54-7	U400
* * *			
[See Prior Text in Bromoacetone - Butyl benzyl phthalate]			
Butylate	Carbamothioic acid, bis (2-methylpropyl)-, S-ethyl ester	2008-41-5	U392
* * *			
[See Prior Text in Cacodylic acid - Copper Cyanide]			
Copper dimethyl-dithiocarbamate	Copper, bis(dimethylcarbamodithioato-S,S')-,	137-29-1	U393
* * *			
[See Prior Text in Creosote - Cycasin]			
Ethyl Ziram	Zinc, bis(diethylcarbamodithioato-S,S')-	14324-55-1	U407
* * *			
[See Prior Text in Famphur]			
Ferbam	Iron, tris(dimethylcarbamodithioato-S,S')-,	14484-64-1	U396
* * *			
[See Prior Text in Fluoranthene - Hydrogen sulfide]			
3-Iodo-2-propynyl n-butylcarbamate	Carbamic acid, butyl-, 3-iodo-2-propynyl ester	55406-53-6	U375
* * *			
[See Prior Text in Indeno[1,2,3-cd]pyrene - Mercury fulminate]			
<b>Common Name</b>	<b>Chemical Abstracts Name</b>	<b>Chemical Abstracts Number</b>	<b>Hazardous Waste Number</b>
Metam Sodium	Carbamodithioic acid, methyl-, monosodium salt	137-42-8	U384
* * *			
[See Prior Text in Methacrylonitrile - MNNG]			
Molinate	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester	2212-67-1	U365
* * *			
[See Prior Text in Mustard gas - Parathion]			
Pebulate	Carbamothioic acid, butylethyl-, S-propyl ester	1114-71-2	U391
* * *			
[See Prior Text in Pentachlorobenzene - Potassium cyanide]			
Potassium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl, potassium salt	128-03-0	U383
Potassium hydroxymethyl-n-methyl- dithiocarbamate	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt	51026-28-9	U378
Potassium n-methyldithiocarbamate	Carbamodithioic acid, methyl-monopotassium salt	137-41-7	U377
* * *			
[See Prior Text in Potassium pentachlorophenate - Selenium sulfide]			
Selenium, tetrakis (dimethyl-dithiocarbamate	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid	144-34-3	U376
<b>Common Name</b>	<b>Chemical Abstracts Name</b>	<b>Chemical Abstracts Number</b>	<b>Hazardous Waste Number</b>

* * *			
[See Prior Text in Acetonitrile - Beryllium compounds, N.O.S. <sup>1</sup> ]			
Bis (pentamethylene)-thiuram tetrasulfide	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-	120-54-7	U400
* * *			
[See Prior Text in Bromoacetone - Butyl benzyl phthalate]			
Butylate	Carbamothioic acid, bis (2-methylpropyl)-, S-ethyl ester	2008-41-5	U392
* * *			
[See Prior Text in Cacodylic acid - Copper Cyanide]			
Copper dimethyl-dithiocarbamate	Copper, bis(dimethylcarbamodithioato-S,S')-,	137-29-1	U393
* * *			
[See Prior Text in Creosote - Cycasin]			
* * *			
[See Prior Text in Selenourea - Sodium cyanide]			
Sodium dibutylthiocarbamate	Carbamodithioic acid, dibutyl, sodium salt	136-30-1	U379
Sodium diethylthiocarbamate	Carbamodithioic acid, diethyl-, sodium salt	148-18-5	U381
Sodium dimethylthiocarbamate	Carbamodithioic acid, dimethyl-, sodium salt	128-04-1	U382
* * *			
[See Prior Text in Sodium pentachlorophenate - Strychnine salts]			
Sulfallate	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester	95-06-7	U277
* * *			
[See Prior Text in TCDD]			
Tetrabutylthiuram disulfide	Thioperoxydicarbonic diamide, tetrabutyl	1634-02-2	U402
Tetrabutylthiuram monosulfide	Bis (dimethylthiocarbamoyl) sulfide	97-74-5	U401
* * *			
[See Prior Text in 1,2,4,5-Tetrachlorobenzene - Vanadium pentoxide]			
Vernolate	Carbamothioic acid, dipropyl-, S-propyl ester	1929-77-7	U385
* * *			
[See Prior Text in Vinyl chloride - Zinc phosphide]			
<b>Common Name</b>	<b>Chemical Abstracts Name</b>	<b>Chemical Abstracts Number</b>	<b>Hazardous Waste Number</b>
Ziram	Zinc, bis(dimethylcarbamodithioato-S,S')-(T-4)-	137-30-4	P205

<sup>1</sup> The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this table.

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 11:1139 (December 1985), LR 13:433 (August 1987), LR 14:424 (July 1988), LR 15:737 (September 1989), LR 16:399 (May 1990), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:944 (September 1995), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### §3115. Incinerator Permits for New or Modified Facilities

\* \* \*

[See Prior Text in A-B.11.d]

12. The administrative authority must send a notice to all persons on the facility mailing list, as set forth in LAC 33:V.717.A.5, and to the appropriate units of state and local government, as set forth in LAC 33:V.717.A.2, announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the administrative authority has issued such notice.

a. This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

b. This notice must contain:

i. the name and telephone number of the applicant's contact person;

ii. the name and telephone number of the permitting agency's contact office;

iii. the location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

iv. an expected time period for commencement and completion of the trial burn.

13. during, or immediately after, each approved trial burn the applicant must make the following determinations when a DRE trial burn is required under LAC 33:V.3009.A:

a. a quantitative analysis of the trial POHCs in the waste feed;

b. a quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O<sub>2</sub>) and hydrogen chloride (HCl);

c. a quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs;

d. a computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in LAC 33:V.3111;

e. if the HCl emission rate exceeds 1.8 kilograms of HCl per hour (four pounds per hour), a computation of HCl removal efficiency in accordance with LAC 33:V.3111;

f. a computation of particulate emissions, in accordance with LAC 33:V.3111;

g. an identification of sources of fugitive emissions and their means of control;

h. a measurement of average, maximum, and minimum temperatures and combustion gas velocity;

i. a continuous measurement of carbon monoxide (CO) in the exhaust gas; and

j. such other information as the administrative authority may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in LAC 33:V.3111 and to establish the operating conditions required by LAC 33:V.3117 as necessary to meet that performance standard.

14. the applicant must submit to the administrative authority a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in Subsection B.13 of this Section. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the administrative authority.

15. all data collected during any trial burn must be submitted to the administrative authority following the completion of the trial burn.

16. all submissions required by this Subsection must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under LAC 33:V.507 and 509.

17. based on the results of the trial burn, the administrative authority shall set the operating requirements in the final permit according to LAC 33:V.3117. The permit modification shall proceed according to LAC 33:V.321.C.

\* \* \*

[See Prior Text in C-C.2]

D. For the purposes of determining feasibility of compliance with the performance standards of LAC 33:V.3111 and of determining adequate operating conditions under LAC 33:V.3117, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with LAC 33:V.529.B and Subsection B, B.1-11, and 13-16 or, instead, submit other information as specified in LAC 33:V.529.C. The administrative authority must announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of Subsection B.12 of this Section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under LAC 33:V.529.A are exempt from compliance with LAC 33:V.3111 and 3117 and, therefore, are exempt from the requirements to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in Subsection B.13 of this Section, with Part II of the permit application. If completion of this process conflicts with the date set for submission of the Part II application, the applicant must contact the administrative authority to establish a later date for submission of the Part II application or the trial burn results. Trial burn results must be submitted prior to issuance of a permit. When the applicant submits a trial burn plan with Part II of the permit application, the administrative authority will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

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 16:614 (July 1990), LR 18:1256 (November 1992), LR 22:828 (September 1996), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **Chapter 33. Groundwater Protection** **§3309. Concentration Limits**

A. The administrative authority will specify in the facility permit concentration limits in the groundwater for hazardous constituents established under LAC 33:V.3307. The concentration of a hazardous constituent:

1. must not exceed the background level of that constituent in the groundwater at the time that limit is specified in the permit; or

2. for any of the constituents listed in Table 1 of this Section, must not exceed the respective value given in that table if the background level of the constituent is below the value given; or

3. must not exceed an alternative limit established by the administrative authority under Subsection B of this Section.

\* \* \*

[See Prior Text in Table 1-Note 1]

B. The administrative authority may establish an alternate concentration limit for a hazardous constituent if he finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the administrative authority will consider the following factors:

1. potential adverse effects on groundwater quality, considering:

a. the physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

b. the hydrogeological characteristics of the facility and surrounding land;

c. the quantity of groundwater and the direction of groundwater flow;

d. the proximity and withdrawal rates of groundwater users;

e. the current and future uses of groundwater in the area;

f. the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

g. the potential for health risks caused by human exposure to waste constituents;

h. the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

i. the persistence and permanence of the potential adverse effects; and

2. potential adverse effects on hydraulically-connected surface water quality, considering:

a. the volume and physical and chemical characteristics of the waste in the regulated unit;

b. the hydrogeological characteristics of the facility and surrounding land;

c. the quantity and quality of groundwater and the direction of groundwater flow;

d. the patterns of rainfall in the region;

e. the proximity of the regulated unit to surface waters;

f. the current and future uses of surface waters in the area and any water quality standards established for those surface waters;

g. the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

h. the potential for health risks caused by human exposure to waste constituents;

i. the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

j. the persistence and permanence of the potential adverse effects.

C. In making any determination under Subsection B of this Section about the use of groundwater in the area around the facility, the administrative authority will consider any identification of underground sources of drinking water and exempted aquifers identified in the permit application under LAC 33:V.Chapter 3.

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 10:280 (April 1984), LR 10:496 (July 1984), LR 16:614 (July 1990), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

## **Chapter 38. Universal Wastes**

### **Subchapter B. Standards for Small Quantity Handlers of Universal Waste**

#### **§3835. Exports**

A small quantity handler of universal waste who sends universal waste to a foreign destination, other than to those OECD countries specified in LAC 33:V.1113.I.1.a (in which case the handler is subject to the requirements of LAC 33:V.Chapter 11.Subchapter B), must:

\* \* \*

[See Prior Text in A.1-3]

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 23:573 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **Subchapter C. Standards for Large Quantity Handlers of Universal Waste**

#### **§3857. Exports**

A large quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in LAC 33:V.1113.I.1.a (in which case the handler is subject to the requirements of LAC 33:V.Chapter 11.Subchapter B) must:

\* \* \*

[See Prior Text in A.1-3]

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 23:577 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

### **Subchapter D. Standards for Universal Waste Transporters**

#### **§3871. Exports**

A universal waste transporter transporting a shipment of universal waste to a foreign destination other than to those OECD countries specified in LAC 33:V.1113.I.1.a (in which case the transporter is subject to the requirements of LAC 33:V.Chapter 11.Subchapter B) may not accept a



shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

\* \* \*

[See Prior Text in A.1-2]

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 23:578 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

#### **Subchapter F. Import Requirements**

##### **§3879. Imports**

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this Chapter, immediately after the waste enters the United States, as indicated in Subsections A-C of this Section.

\* \* \*

[See Prior Text in A-C]

D. Persons managing universal waste that is imported from an OECD country as specified in LAC 33:V.1113.I.1.a are subject to Subsections A-C of this Section, in addition to the requirements of LAC 33:V.Chapter 11.Subchapter B.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:578 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

#### **Chapter 41. Recyclable Materials**

##### **§4105. Requirements for Recyclable Material**

Recyclable materials are subject to additional regulations as follows:

\* \* \*

[See Prior Text in A-E]

F. Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in LAC 33:V.1113.I.1.a) for the purpose of recovery is subject to the requirements of LAC 33:V.Chapter 11.Subchapter B, if it is subject to either the manifesting requirements of LAC 33:V.Chapter 11 or to the universal waste management standards of LAC 33:V.Chapter 38.

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 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:219 (March 1990), LR 17:362 (April 1991), repromulgated LR 18:1256 (November 1992), amended LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), LR 23:579 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

##### **§4143. Recyclable Materials Utilized for Precious Metal Recovery**

\* \* \*

[See Prior Text in A-B.4]

5. generators are subject to the requirements of Subchapter B of this Chapter; and

6. precious metals exported to or imported from designated OECD member countries for recovery are subject to the requirements of LAC 33:V.Chapter 11.Subchapter B and LAC 33:V.4311. Precious metals exported to or imported from non-OECD countries for recovery are subject to the requirements of LAC 33:V.1113 and 1123.

\* \* \*

[See Prior Text in C-D]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

#### **Chapter 43. Interim Status**

##### **Subchapter A. General Facility Standards**

##### **§4311. Required Notices**

Interim status facilities must comply with LAC 33:V.1531.

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), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

##### **Subchapter M. Landfills**

##### **§4507. Special Requirements for Bulk and Containerized Liquids**

\* \* \*

[See Prior Text in A-F.2.a]

b. The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria; or

c. The sorbent material is determined to be nonbiodegradable under OECD test 301B: [CO<sub>2</sub> Evolution (Modified Sturm Test)].

\* \* \*

[See Prior Text in G-G.2]

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), LR 21:266 (March 1995), LR 22:829 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

#### **Chapter 49. Lists of Hazardous Wastes**

##### **§4901. Category I Hazardous Wastes**

\* \* \*

[See Prior Text in A-Table 3]

F. Commercial chemical products or manufacturing chemical intermediates or off-specification commercial chemical products referred to in LAC 33:V.4901.D.1-4 are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity generator exclusion defined in LAC 33:V.3903, 3913, and 3915.A and C. These wastes and their corresponding EPA Hazardous Waste Numbers are listed in Table 4. [Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R

(Reactivity), I (Ignitability), and C (Corrosivity). Absence of a letter indicates that the compound is listed only for toxicity.]

Table 4. Toxic Wastes		
EPA Hazardous Waste Number	Chemical Abstract Number	Hazardous Waste
*** [See Prior Text]		
U119	62-50-0	Ethyl methanesulfonate
U396	14484-64-1	Ferbam
U120	206-44-0	Fluoranthene
*** [See Prior Text]		
U182	123-63-7	Paraldehyde
U391	1114-71-2	Pebulate
U183	608-93-5	Pentachlorobenzene
*** [See Prior Text]		
U179	100-75-4	Piperidine, 1-nitroso-
U400	120-54-7	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-
U383	128-03-0	Potassium dimethyldithiocarbamate
U378	51026-28-9	Potassium n-hydroxymethyl-n-methyl-di-thiocarbamate
U377	137-41-7	Potassium n-methyldithiocarbamate
U192	23950-58-5	Pronamide
*** [See Prior Text]		
U205	7488-56-4	Selenium sulfide SeS <sub>2</sub> (R,T)
U376	144-34-3	Selenium, tetrakis(dimethyldithiocarbamate)
U015	115-02-6	L-Serine, diazoacetate (ester)
See F027	93-72-1	Silvex(2,4,5-TP)
U379	136-30-1	Sodium dibutyldithiocarbamate
U381	148-18-5	Sodium diethyldithiocarbamate
U382	128-04-1	Sodium dimethyldithiocarbamate
U206	18883-66-4	Streptozotocin
U277	95-06-7	Sulfallate
U103	77-78-1	Sulfuric acid, dimethyl ester
*** [See Prior Text]		

See F027	93-76-5	2,4,5-T
U402	1634-02-2	Tetrabutylthiuram disulfide
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
*** [See Prior Text]		
U213	109-99-9	Tetrahydrofuran (I)
U401	97-74-5	Tetramethylthiuram monosulfide
U214	563-68-8	Thallium(I) acetate
*** [See Prior Text]		
U217	10102-45-1	Thallium(I) nitrate
U366	533-74-4	2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl-
U218	62-55-5	Thioacetamide
*** [See Prior Text]		
U244	137-26-8	Thioperoxydicarbonic diamide [(H <sub>2</sub> N)C(S)] <sub>2</sub> S <sub>2</sub> , tetramethyl-
U402	1634-02-2	Thioperoxydicarbonic diamide, tetrabutyl
U403	97-77-8	Thioperoxydicarbonic diamide, tetraethyl
U219	62-56-6	Thiourea
*** [See Prior Text]		
U177	684-93-5	Urea, N-methyl-N-nitroso-
U385	1929-77-7	Vernolate
U043	75-01-4	Vinyl chloride
*** [See Prior Text]		
U200	50-55-5	Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxyl]-, methyl ester,(3beta,16beta,17alpha,18beta,20alpha)-
U407	14324-55-1	Zinc, bis(diethylcarbamo-dithioato-S,S')-
U249	1314-84-7	Zinc phosphide Zn <sub>3</sub> P <sub>2</sub> , when present at concentrations of 10 percent or less

<sup>1</sup> CAS Number given for parent compound only.

\*\*\*

[See Prior Text in G]

Table 6 lists constituents that serve as a basis for listing hazardous waste.

**Table 6. Table of Constituents that Serve as a Basis for Listing Hazardous Waste**

\* \* \*

[See Prior Text in F001-K151]

EPA Hazardous Waste Number K156 benomyl carbaryl carbendazim carbofuran carbosulfan formaldehyde methylene chloride triethylamine
EPA Hazardous Waste Number K157 Carbon tetrachloride formaldehyde methyl chloride methylene chloride pyridine triethylamine
EPA Hazardous Waste Number K158 benomyl carbendazim carbofuran carbosulfan chloroform methylene chloride
EPA Hazardous Waste Number K159 benzene butylate EPTC molinate pebulate vernolate
EPA Hazardous Waste Number K161 antimony arsenic metam-sodium ziram

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:320 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:790 (November 1988), LR 15:182 (March 1989), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829 (September 1996), LR 22:840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:

A public hearing will be held on February 27, 1998, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by HW061\*. Such comments must be received no later than February 27, 1998, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504)765-0486. The comment period for this rule ends on the same date as the public hearing.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asthma Boulevard, Suite 151, Lafayette, LA 70508; or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

H.M. Strong  
Assistant Secretary

9801#073

**NOTICE OF INTENT**

**Firefighters' Pension and Relief Fund  
City of New Orleans and Vicinity**

**Domestic Relations Orders**

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity (the "fund"), pursuant to R.S. 11:3363(F), proposes to amend and adopt rules and regulations for Determining Qualified Status of Domestic Relations Orders.

These rules were originally promulgated on pages 501 and 502 of the June 20, 1990 issue of the *Louisiana Register*, and were amended on pages 1303-1306 of the October 1997 issue of the *Louisiana Register*.

On June 20, 1990, the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans ("the trustees") adopted and implemented Procedural Rules for Determining the Qualified Status of Domestic Relations Orders; and the trustees now wish to amend these rules to incorporate the guidance and comments published more recently by the Internal Revenue Service, the Department of Labor, and the Pension Benefit Guaranty Corporation. The aforesaid rules are hereby amended to incorporate and substitute the provisions appearing below.

**Determining Qualified Status of  
Domestic Relations Orders**

**1. Intent and Construction**

These procedural rules are adopted in order to satisfy the requirements of all applicable state law including, but not limited to, R.S. 11:291, and 292, R.S. 11:3408, Subsection 206(d) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1056(d), and §414(p) of the *Internal Revenue Code*, 26 U.S.C. §414(p), and shall be construed consistently with this purpose.

The trustees are aware that §401(a)(13)(A) of the code provides that benefits under a qualified plan may not be assigned or alienated. Section 401(a)(13)(B) establishes an exception to the anti-alienation rule for assignments made pursuant to domestic relations orders that constitute Qualified Domestic Relations Orders ("QDROs") within the meaning of §414(p)(1)(B) and of Paragraph 2 hereof. Moreover, R.S. 11:291 and 292 similarly establish exceptions to the anti-assignment prohibition imposed by R.S. 11:3408 in regard to this fund. In view of the trustees' intent to administer the fund as a qualified plan, as well as their awareness that R.S. 11:291 and 292 require the fund to honor certain court-ordered assignments relating to community property rights and child support, these rules hereby establish the trustees' willingness to recognize and enforce any QDRO that meets the requirements set forth herein.

It is further intended that the provisions of §414(p)(3) of the code and R.S. 11:291 and 292 be strictly observed. Therefore, the trustees shall not honor the terms of any QDRO that purports to require the fund to provide any type or form of benefit, or any option, not otherwise provided under the fund; that requires the fund to provide increased benefits (determined on the basis of actuarial value); or that requires the payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a QDRO.

However, the trustees shall not treat a domestic relations order as failing to meet the requirements of §414(p)(3)(A) and thus to constitute a QDRO solely because the order requires payment of benefits to an alternate payee on or after the participant's earliest retirement age, even if the participant has not separated from service at that time.

Finally, it is the trustees' intent to honor the provision of any QDRO that the participant's former spouse shall be treated as the participant's surviving spouse for purposes of the right to receive all or part of any survivor benefits payable, and that any other spouse of the participant shall not be treated as a spouse of the participant for these purposes, except as to portions of the survivor benefits not assigned to the former spouse via the QDRO. In the event the participant's former spouse is required by the provisions of a QDRO to be treated as a surviving spouse for these purposes, the former spouse must be accorded the same rights that would otherwise accrue to the surviving spouse.

## 2. Definitions

As used in these procedural rules, unless the context indicates otherwise, the following terms shall have the following meanings:

*Alternate Payee*—the participant's spouse (or former spouse) or child, or any parent, guardian, government entity, or other agent authorized by the terms of a judicial order to act on the child's behalf, who is entitled to receive some or all of the fund's benefit payments with respect to the participant under the terms of the QDRO. The same QDRO may identify more than one alternate payee; and several alternate payees may be identified in multiple QDROs. However, the trustees shall not recognize the entitlement of any alternate payee, even if specified in a domestic relations order, if the benefits

assigned therein have already been assigned by reason of an earlier QDRO validly served upon the fund.

*Domestic Relations Order*—any judgment, decree, or order (including approval of a property settlement or community property partition) that:

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant; and

(ii) is made pursuant to a state domestic relations law (including a community property law).

A state court shall actually issue an order or formally approve a proposed property settlement in order for it to be recognized by the trustees as a domestic relations order. A property settlement or community property partition signed by a participant and the participant's former spouse, or a draft order to which both parties consent, shall not be considered a domestic relations order until the state authority has adopted it as an order or formally approved it and made it part of the domestic relations proceeding.

*Earliest Retirement Date*—the earlier of:

(i) the date on which the participant is entitled to a distribution under the fund; or

(ii) the later of:

(A) the date the participant attains age 50; or

(B) the earliest date on which the participant could begin receiving benefits under the fund if the participant separated from service.

*Participant*—any employee or former employee of an employer in relation to the fund who is or may become eligible to receive a benefit of any type from the fund, and who is the individual whose benefits under the fund are being divided by the QDRO.

*Qualified Domestic Relations Order*—a domestic relations order that creates or recognizes the existence of an alternate payee's right (or assigns to an alternate payee the right) to receive all or a portion of the benefits payable with respect to a participant in the fund, provided that the order:

(i) clearly specifies:

(A) the name and last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order or, in the event the alternate payee is a minor or legally incompetent, the name and address of the alternate payee's legal representative; provided, however, that the trustees shall not withhold recognition as a QDRO of a judicial order issued in connection with a participant's child support obligations merely because the name of the child on whose behalf the order has been issued is not specified therein, so long as the order identifies the name of the authorized individual or agency, with appropriate address to which the benefit assignment is to be forwarded, and so long as the order specifically identifies the payment as a child support obligation;

(B) the amount or percentage of the participant's or the survivor benefits to be paid by the fund to each such alternate payee, or the manner in which such amount or percentage is to be determined;

(C) the number of payments or the period to which such order applies, and

(D) the name and identity of the fund;

(ii) does not require:

(A) the fund to provide any type or form of benefits, or any option, not otherwise provided under the fund;

(B) the fund to provide increased benefits (determined on the basis of actuarial value); or

(C) the payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

*Trustees*—the Board of Trustees for the Firefighters' Pension and Relief Fund for the City of New Orleans, or such person or entity to whom the board has delegated responsibility to make determinations on its behalf under these rules.

### 3. QDRO Language

Many factors should be taken into account by the drafters of a QDRO in determining which benefits to assign to an alternate payee and how these benefits are to be assigned. Because of the complexity and variety of the factors that should be considered and the need to tailor the assignment of benefits under a QDRO to the individual circumstances of the parties, it would be inappropriate for the trustees to propose specific sample language for inclusion in a QDRO. Instead, individual participants and alternate payees, and their respective attorneys, are directed to collaborate jointly upon the drafting of orders that meet their individual needs. Nevertheless, if so requested, the trustees shall review any proposed order submitted to the fund prior to its submission to the appropriate court for execution and entry, with a view to indicating the trustees' probable determination concerning its status as a QDRO. The trustees are required by law to honor and enforce the terms of any QDRO which meets the conditions specified in these rules and as may subsequently be determined by the applicable statutes and the courts' interpretations thereof.

For further guidance concerning those matters that should be considered when drafting a QDRO (e.g., types of benefits, approaches to dividing retirement benefits, form and commencement of payment to alternate payees, survivor benefits and treatment of former spouse as participant's spouse, and tax treatment of benefit payments made pursuant to a QDRO) the parties are encouraged to consult Notice 97-11 issued by the Internal Revenue Service and appearing in *Internal Revenue Bulletin 1997-2* dated January 13, 1997. Additional guidance may be found in the Pension Benefit Guaranty Corporation's booklet entitled *Divorce Orders and PBGC*, which discusses the special QDRO rules that apply for plans that have been terminated and are trustee by PBGC, and provides model QDROs for use with those plans. The publication may be obtained by calling PBGC's Customer Service Center at 1-800-400-PBGC, or electronically via the PBGC Internet site at "<http://www.pbgc.gov>." However, some or all of the principles there set forth may not apply to this fund by reason of its status as a statutory governmental plan and/or the types of benefits payable under R.S. 11:3361 et seq.

### 4. Notice

Upon the fund's receipt of a domestic relations order with respect to a participant, the trustees shall promptly give notice of these procedural rules to the participant and to each person specified in the order as entitled to payment of any fund benefits under the order, at the address the order specifies.

### 5. Determination

(a) The trustees shall determine whether a domestic relations order is a qualified domestic relations order within a reasonable time after it is received, and shall have the right to require such evidence as he may reasonably need to make the determination.

(b) The trustees shall notify the participant and the alternate payee of the determination no less than 30 days before making any payment pursuant to the order, if it is determined to be a qualified order, or within a reasonable time if it is determined not to be a qualified order.

(c) The participant may appeal such a determination to the trustees upon written application to the trustees. The participant may review any documents pertinent to the appeal and may submit issues and comments in writing to the trustees. No appeal shall be considered unless it is received by the trustees within 90 days after receipt by the participant of written notice of the determination.

(d) The trustees shall decide the appeal within 60 days after it is received. If special circumstances require an extension of time for processing, however, a decision shall be rendered as soon as possible, but not later than 120 days after the appeal is received. If such an extension of time for deciding the appeal is required, written notice of the extension shall be furnished to the participant prior to the commencement of the extension.

(e) The trustees' decision shall be in writing and shall include specific reasons for the decision, expressed in a manner calculated to be understood by the participant and the alternate payee.

### 6. Payments Pending Determination

During any period in which the issue whether a domestic relations order is a qualified domestic relations order is being determined (by the trustees, by a court of competent jurisdiction, or otherwise), the trustees shall segregate in a separate account in the fund the amounts that would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(a) To the extent that the domestic relations order is determined to be qualified, the fund shall pay the segregated amounts (plus any interest on them) to the person or persons entitled to them according to the terms of the order. In the case of determinations appealed under these procedural rules, the payment shall be made not less than 10 days nor more than 30 days after the issuance of the trustees' disposition of the appeal.

(b) To the extent that the domestic relations order is determined not to be qualified, the fund shall pay the segregated amounts (plus any interest on them) to the person

or persons who would have been entitled to such amounts without regard to the terms of the order. In the case of determinations appealed under these procedures, the payment shall take place not less than 10 days nor more than 30 days after the issuance of the trustees' disposition of the appeal.

(c) To the extent that the issue whether the domestic relations order is qualified is not resolved within 18 months after the fund receives notice of the order, the trustees shall pay the segregated amounts (plus any interest on them) to the person or persons who would have been entitled to these amounts without regard to the terms of the order.

#### **7. Representative of Alternate Payee**

An alternate payee, by written notice to the trustees, may designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

A public hearing will be conducted by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity at 10 a.m. on February 26, 1998 at 329 South Dorgenois Street, New Orleans, LA 70119.

Any interested party may submit data, views or arguments orally or in writing concerning these rules or may make inquiries concerning the adoption of these rules to Richard J. Hampton, Jr., Secretary-Treasurer of the Board of Trustees, 329 South Dorgenois Street, New Orleans, LA 70119.

William M. Carrouché  
President

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Domestic Relations Orders**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no estimated costs or savings to the state or local governmental units as a result of this proposed measure.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Adoption and implementation of the proposed amended rules and regulations for determining qualified status of domestic relations orders will have no effect on revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Adoption and implementation of the proposed amendments will have no cost impact, nor provide an economic benefit to any person or nongovernmental group.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Adoption and implementation of the proposed amendments for determining qualified status of domestic relations orders will have no effect on competition and employment.

Marie Healey  
Fund Counsel  
9801#055

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **Office of the Governor Commission on Law Enforcement and Administration of Criminal Justice**

Code of Professional Conduct  
Asset Forfeiture (LAC 22:III.Chapter 61)

In accordance with the provision of R.S. 15:1204, R.S. 15:1207, and R.S. 49:950 et seq., the Administrative Procedure Act, the Commission on Law Enforcement and Administration of Criminal Justice hereby gives notice of its intent to adopt rules and regulations relative to a code of professional conduct for asset forfeiture.

#### **Title 22**

### **CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT**

#### **Part III. Commission on Law Enforcement and Administration of Criminal Justice**

##### **Subpart 7. Asset Forfeiture**

#### **Chapter 61. Code of Professional Conduct**

##### **§6101. Adoption**

The Louisiana Commission on Law Enforcement and Administration of Criminal Justice has adopted a code of professional conduct for asset forfeiture at a meeting held Tuesday, December 2, 1997.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 24:

##### **§6102. Introduction**

The purpose of the Code of Professional Conduct is to establish ethical standards applicable to asset forfeiture programs throughout the state of Louisiana. These standards are similar to the National Code of Professional Conduct for Asset Forfeiture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 24:

##### **§6103. Code of Professional Conduct**

A. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.

B. A prosecutor's or sworn law enforcement officer's employment or salary shall not be contingent upon the level of seizures or forfeitures he or she achieves.

C. Whenever practical, and in all cases involving real property, a judicial finding of probable cause shall be secured when property is seized for forfeiture. Seizing agencies shall strictly comply with all applicable legal requirements governing seizure practice and procedure.

D. A judicial finding of probable cause must be secured as provided by law.

E. Seizing entities shall have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures.

F. The manual shall include procedures for prompt notice to interest holders, the expeditious release of seized property where appropriate, and the prompt resolution of claims of innocent ownership.

G. All property forfeited must be sold at public sale, and the proceeds distributed according to law.

H. Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.

I. Seizing agencies shall strive to ensure that seized property is protected and its value preserved.

J. Seizing entities shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 24:

Interested persons may submit written comments on this proposed rule no later than February 8, 1998, at 5 p.m. to Judy Mouton, Deputy Director, Commission on Law Enforcement and Administration of Criminal Justice, 1885 Wooddale Boulevard, Room 708, Baton Rouge, LA 70806.

Michael A. Ranatza  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Ethical Standards for Asset Forfeiture**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is estimated that implementation of the proposed rules will increase expenditures to the Commission on Law Enforcement and Administration of Criminal Justice by \$340 in printing costs to publish the rules in the *Louisiana Register*. These proposed rules are being promulgated in accordance with HCR 156 of the 1997 Regular Session which directed the commission to promulgate guidelines similar to the National Asset Forfeiture Ethical Standards. These guidelines will detail the statutory grounds for forfeiture, procedures for prompt notice, and prompt resolution of claims. These proposed rules will require those local governmental units with asset forfeiture programs to update their policy and procedure manuals and to disseminate copies to certain personnel. These copying charges should be minimal to local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is estimated that implementation of the proposed rules will have no effect on revenue collections of state governmental units. The effect on revenue collections of local governmental units is unknown. These rules will establish ethical standards applicable to asset forfeiture programs throughout the state. There could be a potential reduction in revenue collections for those local law enforcement agencies with forfeiture and seizure

practices which would be prohibited by the Code of Professional Conduct for Asset Forfeiture; however, the exact amount is unknown.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Individual persons or nongovernmental groups would not be directly affected by the establishment of ethical standards for asset forfeiture.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no effect on competition or employment in the public or private sector as a result of these proposed rules.

Michael A. Ranatza  
Executive Director  
9801#074

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Dentistry**

Comprehensive Rule Revisions  
(LAC 46:XXXIII.Chapters 1-17)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.Chapters 1-17. No preamble has been prepared.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXXIII. Dental Health Professions**

**Chapter 1. General Provisions**

**§103. Evidence of Graduation**

A. All applicants for a dental or dental hygiene license shall furnish the board with satisfactory evidence of graduation from an accredited dental school, dental college, or educational program prior to the examination given by the board for such licensure. An accredited dental school, dental college, or educational program shall be one that has been certified as accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The phrase "satisfactory evidence of graduation from an accredited dental school, dental college or educational program" shall mean receipt of satisfactory evidence from the dean of the applicant's school specifically stating that the applicant will indeed graduate within 90 days following the administration of the Louisiana State Board of Dentistry clinical licensing examination.

C. The president of the board shall withhold his signature on the license of the applicant pending receipt of satisfactory evidence of graduation before awarding the applicant's license to practice dentistry or dental hygiene in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Dentistry, LR 10:88 (February 1984), amended by the Department of Health and Hospitals, Board of Dentistry, LR 24:

#### **§108. Levels and Definitions of Supervision**

Licensed dentists who employ dental assistants, expanded duty dental assistants, and dental hygienists shall be responsible for the supervision of those employees' authorized duties. Authorized duties of dental assistants, expanded duty dental assistants, and dental hygienists may also be under the supervision of a licensed dentist who assumes responsibility for the treatment of that patient.

1. Direct Supervision. A licensed dentist personally diagnoses the condition to be treated; personally authorizes the procedures; is in the dental office or treatment facility during the performance of the authorized procedures; and, before dismissal of the patient, evaluates the performance of the dental assistant, expanded duty dental assistant, or dental hygienist.

2. General Supervision. The licensed dentist has authorized the procedures, which are being carried out by the dental hygienist in accordance with the dentist's treatment plan; however, the dentist is not required to be present in the dental office or treatment facility during the performance of the supervised procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

#### **§110. Licensees Suffering Impairment Due to Alcohol or Substance Abuse**

A. After considerable study and review of other state practices in regards to evaluation, diagnosis, prognosis, and treatment of licensees suffering impairment through chemical or drug abuse, the board shall hereby abide by the following procedures.

1. The board shall attempt to have the Louisiana Dental Association, the Louisiana Dental Hygiene Association, or a constituent association thereof, conduct an intervention with the alleged impaired licensee.

2. Where possible, a member of the Louisiana State Board of Dentistry may attend said intervention on either an official or unofficial basis according to his judgment in each particular case.

3. If the alleged impaired licensee fails to comply with the wishes and instructions of the intervention within seven days following said intervention, the board may order said alleged licensee into a properly equipped and board-approved facility for evaluation and, if necessary, treatment for the impairment, if same is proven positive. Should the evaluation prove that the licensee is not impaired, the cost of the evaluation shall be borne by the board. If the evaluation is positive for impairment, the cost for evaluation and all treatment thereof shall be borne by the licensee.

4. Should the alleged impaired licensee fail to comply with the order of the board relative to evaluation and treatment, formal proceedings may be brought against the alleged impaired licensee as soon as practicality dictates.

B. Any adverse action taken as a result thereof shall be reported to the National Practitioner Data Bank. However, if

there is no action taken by the board in these matters, any required reporting to the National Practitioner Data Bank shall not be the responsibility of the Louisiana State Board of Dentistry.

C. If the impaired licensee has violated any other provisions of the Louisiana Dental Practice Act, said violation shall be prosecuted and any subsequent action taken thereof shall be reported to the National Practitioner Data Bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(2) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

#### **§112. Avoidance of Conflict of Interest by Board Members**

A. No board member, during his or her term of office, shall simultaneously serve or hold the following appointive or elective offices in any local or statewide voluntary dental or dental hygiene association, organization, or society:

1. president;
2. president-elect;
3. vice-president;
4. secretary;
5. treasurer;
6. board of directors (elected or ex-officio);
7. peer review committee;
8. delegate or alternate delegate.

B. However, §112 shall not prohibit a board member from participating in any capacity relative to the administration of continuing education in any local or statewide voluntary dental association, organization, or society.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

#### **§114. Reinstatement of Licenses Revoked for Nonpayment**

Any licensee seeking the reinstatement of his or her license to practice dentistry or dental hygiene in the state of Louisiana shall request, in writing, the reinstatement of his or her license, and personally appear before the board for an interview to determine the merits of the request for reinstatement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

#### **§116. Reconsideration of Adverse Sanctions**

A. Any person wishing to initiate an application for reconsideration of an adverse disciplinary decision of the board or consent decree must make the request in writing and it shall be received by the board at its office at least 30 days prior to the next scheduled meeting of the board.

B. The request for reconsideration should be accompanied by supporting documentation and other pertinent information demonstrating his/her professional and/or personal rehabilitation since the adverse disciplinary sanctions or decision of the board.

C. If timely received, the applicant's written request and all supporting documentation and/or information are delivered to the board's disciplinary committee which originally rendered the adverse decision to the applicant, and said committee shall determine if the applicant's request for reconsideration has



substantial merit. In the course of the committee's review, if it deems necessary, it may require the applicant and all supporting references to appear in person before the committee for the purpose of affording the committee an opportunity to personally interview each person. All expenses for the attendance of the applicant and his/her personal references shall be borne by the applicant. Because of the nature of the request, the committee may entertain it in executive session at the option of the applicant. Moreover, the committee shall prescribe time limitations for all speakers appearing before it and order such other considerations as will promote a fair and orderly review of the subject matter. After review of the documentation and completion of the interviews, if any, the committee will determine if the request for reconsideration has sufficient merit to warrant the committee's favorable recommendation to the full board. If the committee rules favorably to the applicant, then the applicant's entire request for reconsideration and all supporting documentation and/or information are forwarded to the full board for its further consideration at the next scheduled board meeting.

D. If the committee decides that the application is without substantial merit, it shall so inform the officers of the board and, thereafter, one officer shall be appointed to notify the applicant, in writing, of said unfavorable action.

E. The full board, at its next meeting, may consider the matter in open meeting if requested to do so by the applicant. In the absence of such consent, the board shall entertain the matter in executive session. In the course of the board's review, if it deems necessary, it may require the applicant and all supporting references to appear in person before the board for the purpose of affording the board an opportunity to interview each person first hand. All expenses for the attendance of the applicant and his/her personal references shall be borne by the applicant. Moreover, the board shall prescribe time limitations for all speakers appearing before it and order such other considerations as will promote a fair and orderly meeting.

F. If the full board concurs with the favorable recommendations of the disciplinary committee, then the board shall decide upon the exact terms and conditions of any amendment, modification, or other change in the original decision rendered against the applicant. Thereafter, the applicant shall be notified, in writing, of the board's decision.

G. If the full board does not concur with the favorable recommendations of the disciplinary committee, then the board shall so notify the applicant in writing.

H. Any person desiring to file an application for a reconsideration with the board shall be permitted to do so only once every 12 months. If an application is denied, then that person must wait at least until the expiration of 12 months from the date appearing on the board's denial letter before submitting a subsequent application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

#### **§118. Guidelines for Granting Return to Active Status**

In addition to the continuing education requirements set forth in LAC 46:XXXIII.1601 et seq., an applicant must pass

the examination in jurisprudence and ethics as given by the board, and make full payment of all necessary fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

#### **§120. Temporary Licenses**

Under R.S. 37:760(6), the board is authorized to issue licenses in conformity with the Louisiana Dental Practice Act. However, under R.S. 37:752(8), dentists and dental hygienists may obtain a temporary license without satisfying all licensing requirements of the Louisiana Dental Practice Act provided the applicant applies for a full license by taking an examination at the next time the clinical licensure examination is given by the board or by applying for licensure by credentials. In order to protect the public and to avoid abuses of this exemption, the board shall not award a temporary license to any dentist under the provisions of R.S. 37:752(8), and will not award a temporary license to any dental hygienist within 60 days before or 60 days after the clinical licensing examination is given. Section 120 does not prohibit the awarding of temporary licenses to dentists who are seeking exemptions under R.S. 37:752(4).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

#### **§122. Scopes of Practice**

A. The board has reviewed and approved the "Standards for Advanced Specialty Education Programs" set forth by the Commission on Dental Accreditation of the American Dental Association and approves of the following specialties:

1. dental public health;
2. endodontics;
3. oral and maxillofacial surgery;
4. oral pathology;
5. orthodontic and facial orthopedics;
6. pediatric dentistry;
7. periodontics; and
8. prosthodontics.

B. The board approves of the definition of the specialties listed in §122.A and as set forth in §301.D, and acknowledges that those definitions set forth the scope of practice of said specialties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

### **Chapter 3. Dentists**

#### **§306. Requirements of Applicants for Licensure by Credentials**

A. Before any applicant is awarded a license according to his/her credentials in lieu of an examination administered by the board, said applicant shall provide to the board satisfactory documentation evidencing that he/she:

1. has satisfactorily passed an examination administered by the Louisiana State Board of Dentistry testing the applicant's knowledge of the Louisiana Dental Practice Act and the jurisprudence affecting same;

2. currently possesses a nonrestricted license in another state as defined in R.S. 37:751(L);

3. has been in active practice, while possessing a nonrestricted license in another state, by working full-time as a dentist at a minimum of 1,000 hours per year for the preceding five years before applying for licensure in Louisiana or full-time dental education as a teacher for a minimum of three years immediately prior to applying for licensure; or has completed a two-year general dentistry residency program or successfully completed a residency program in one of the board recognized dental specialties as defined in §301;

4. - 18. ...

19. is free of any communicable or contagious disease, including but not limited to Human Immunodeficiency Virus and Hepatitis B Virus, and provide a notarized certificate of health from a medical doctor relative to his physical and mental condition;

20. has completed continuing education equivalent to the state of Louisiana's for the two years prior to applying for licensure by credentials.

B. The applicant must also:

1. show or provide a sworn affidavit that there are no unresolved complaints against him/her;

2. provide a notarized statement from the local peer review chairman where he/she is presently practicing stating that there have been no negative cases within the preceding five years relative to the applicant;

3. sign a release authorizing the peer review chairman to provide such information to the board;

4. show that his professional liability insurance has never been revoked, modified, or nonrenewed;

5. show proof that he/she has not failed the Louisiana State Board of Dentistry clinical licensure examination within the preceding 10 years;

C. A person in a residency program may not apply for licensure by credentials unless they have held an active license for at least two years during said residency. The fact of passing a regional board examination is not acceptable unless the license has been activated.

D. Applicants must also meet those requirements set forth in R.S. 37:761 and LAC 46:XXXIII.103.

E. Regardless of the applicant's compliance with the foregoing requirements, the board may refuse to issue a dental or dental hygiene license based on the applicant's credentials for any reason listed in R.S. 37:775 and R.S. 37:776.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21:571 (June 1995), LR 22:23 (January 1996), LR 23:1528 (November 1997), LR 24:

## **Chapter 4. Fees and Costs**

### **Subchapter A. General Provisions**

#### **§405. Payments Nonrefundable**

Except as may be expressly provided by these rules, all fees and costs paid to the board shall be nonrefundable in their entirety. All licenses renewed for two years shall be paid in full whether the licensee intends to retire within the two-year period or not.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:791 (November 1988), amended LR 24:

### **Subchapter C. Fees for Dentists**

#### **§415. Licenses, Permits, and Examinations**

For processing applications for licensure, permits, and examinations, the following fees shall be payable in advance to the board:

1. Examination and licensing of dental applicant \$500

2. - 11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1526 (November 1997), LR 24:

### **Subchapter D. Fees for Dental Hygienists**

#### **§419. Licenses, Permits, and Examinations**

For processing applications for licensure, permits, and examinations, the following fees shall be payable in advance to the board:

1. Examination and licensing of dental hygienist applicant \$200

2. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1527 (November 1997), LR 24:

## **Chapter 5. Dental Assistants**

### **§502. Authorized Duties of Expanded Duty Dental Assistants**

A. A person licensed to practice dentistry in the state of Louisiana may delegate to any expanded duty dental assistant any chairside dental act that said dentist deems reasonable, using sound professional judgment. Such act must be performed properly and safely on the patient and must be reversible in nature. Furthermore, the act must be under the direct supervision of the treating dentist. However, a dentist may not delegate to an expanded duty dental assistant:

1. periodontal screening and probing, or subgingival exploration for hard and soft deposits and sulcular irrigations;

2. the removal of calculus, deposits or accretions from the natural and restored surfaces of teeth or dental implants in the human mouth using hand, ultrasonic, sonic, or air polishing instruments;

3. root planing or the smoothing and polishing of roughened root surfaces using hand, ultrasonic, or sonic instruments;

4. placement and removal of antimicrobial impregnated fibers;

5. comprehensive examination or diagnosis and treatment planning;

6. a surgical or cutting procedure on hard or soft tissue including laser and micro abrasion reduction of tooth material;

7. the prescription of a drug, medication, or work authorization;

8. the taking of an impression for a final fixed or removable restoration or prosthesis;
9. the final placement and intraoral adjustment of a fixed appliance;
10. the final placement and intraoral or extraoral adjustment of a removable appliance;
11. the making of any intraoral occlusal adjustment;
12. the performance of direct pulp capping or pulpotomy;
13. the placement or finishing of any final restoration;
14. the final placement of orthodontic bands or brackets except in indirect bonding procedures in which the dentist has either performed the final placement of the brackets on the model or when the dentist has written a detailed prescription to the laboratory for placement of the bracket;
15. the administration of a local anesthetic, parenteral, Intravenous (IV), inhalation sedative agent or any general anesthetic agent; and
16. placement of pit and fissure sealants.

B. The delegating dentist shall remain responsible for any dental act performed by an expanded duty dental assistant.

C. Certified expanded duty dental assistants may not hold themselves out to the public as authorized to practice dentistry or dental hygiene.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:205 (February 1993), amended LR 21:569 (June 1995), LR 22:793 (August 1996), LR 22:1217 (December 1996), LR 24:

### **§503. Guide to Curriculum Development for Expanded Duty Dental Assistants**

A. Cognitive Objectives. Before becoming registered to perform expanded duty dental assistant functions, dental assistants should be tested on the reasons for doing these procedures, the criteria for correct performance of these procedures, and the effects of improper performance of these procedures. The dental assistant shall be familiar with the state Dental Practice Act and the rules and regulations governing dental auxiliaries. This testing shall be included within at least 30 hours of instruction.

B. The following is a model outline for the expanded duty dental assistant course. The hours are to be allocated by the instructor in accordance with current law:

1. introduction: what is an expanded duty dental assistant?;
2. jurisprudence: legal duties of auxiliaries; limitation of auxiliary services; responsibility of dentists for all service provided under dentist's supervision; responsibility of auxiliaries to perform only those functions that are legally delegated; penalties for violation of Dental Practice Act; and mechanism to report to the board violations of dentists and/or auxiliaries;
3. infection control and prevention of disease transmission; dental assistants' responsibilities in upholding universal barrier techniques; and OSHA rules;
4. handling dental emergencies;
5. charting;
6. oral anatomy; morphology of the teeth; and medical and dental history for the dentist's review (vital signs,

drug evaluation, medical laboratory reports, ascertaining the patient's chief dental problem);

7. overview of dental materials: cavity liners, temporary crown materials, periodontal dressings, post-surgical packs and acid-etch materials;

8. coronal polishing: rationale, materials, techniques and contraindications;

9. lab on coronal polishing and performance evaluation; half of the lab period shall be spent practicing on typodonts while the second half shall be spent practicing on partners;

10. lecture on use of gingival retraction cords; types of cords placement; and removal of cords.

11. lab on placement and removal of retraction cords; and performance evaluation-lab period shall be practicing on mannequins;

12. lab on placement of cavity liners; placement of temporary restorations; fabrications and placement of temporary crowns; placement of periodontal dressings; placement of post-surgical packs; performance of acid-etch techniques; placement and removal of wedges and matrices; and performance evaluation;

13. lecture on monitoring nitrous oxide/oxygen (N<sub>2</sub>O/O<sub>2</sub>) sedation;

14. Cardiopulmonary Resuscitation Course "C," Basic Life Support for Health Care Providers as defined by the American Heart Association or the Red Cross Professional Rescue Course; this course may count for three hours of instruction provided this course has been successfully completed within six months prior to certification;

15. clinical exam instructions;

16. clinical and written exams.

C. All applicants for expanded duty dental assistant certificate confirmation must successfully complete a course in x-ray function and safety approved by the Louisiana State Board of Dentistry. Any dental assistant who may have been grandfathered in 1984 with the amendment to R.S. 37:792 must still take a radiology course as described herein in order to seek the certificate confirmation as an expanded duty dental assistant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:205 (February 1993), amended LR 22:22 (January 1996), LR 24:

### **§507. High School Diploma Requirement**

Effective January 1, 1998, all applicants for expanded duty dental assistant certificate confirmation shall present satisfactory documentation evidencing their graduation from an accredited high school or receipt of a general equivalency diploma (GED).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

## **Chapter 7. Dental Hygienists**

### **§701. Authorized Duties**

A. Dental hygienists are expressly authorized to perform the procedure referred to as an *oral prophylaxis*, which is defined as the removal of plaque, calculus and stains from the

exposed and unexposed surfaces of the teeth by scaling and polishing as a preventive measure for the control of local irritational factors.

B. A person licensed to practice dentistry in the state of Louisiana may delegate to any dental hygienist any chairside dental act which said dentist deems reasonable, using sound professional judgment. Such act must be performed properly and safely on the patient. Furthermore, the act must be under the direct on-premises supervision of the treating dentist. However, dental hygienists who perform authorized duties in any public institution or school may perform authorized duties under the general supervision of a licensed dentist. A dentist may not delegate to a dental hygienist:

1. comprehensive examination or diagnosis and treatment planning;
2. a surgical or cutting procedure on hard or soft tissue including laser and micro abrasion reduction of tooth material;
3. the prescription of a drug, medication, or work authorization;
4. the taking of an impression for a final fixed or removable restoration or prosthesis;
5. the final placement and intraoral adjustment of a fixed appliance;
6. the final placement and intraoral or extraoral adjustment of a removable appliance;
7. the making of any intraoral occlusal adjustment;
8. the performance of direct pulp capping or pulpotomy;
9. the placement or finishing of any final restoration except for the polishing of an amalgam restoration;
10. the final placement of orthodontic bands or brackets except in indirect bonding procedures in which the dentist has either performed the final placement of the brackets on the model or when the dentist has written a detailed prescription to the laboratory for placement of the bracket; and
11. the administration of local anesthetic, parenteral, Intravenous (IV), inhalation sedative agent, or any general anesthetic agent (exception: see §710, "Administration of Local Anesthesia for Dental Hygiene Purposes").

C. The delegating dentist shall remain responsible for any dental act performed by a dental hygienist.

D. Registered dental hygienists may not hold themselves out to the public as authorized to practice dentistry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:791 (November 1988), amended LR 15:965 (November 1989), LR 19:206 (February 1993), LR 22:22 (January 1996), LR 22:1217 (December 1996), LR 24:

#### **§706. Requirements of Applicants for Licensure by Credentials**

A. Before any applicant is awarded a license according to his/her credentials in lieu of an examination administered by the board, said applicant shall provide to the board satisfactory documentation evidencing that he/she:

1. has satisfactorily passed an examination administered by the Louisiana State Board of Dentistry testing the applicant's knowledge of the Louisiana Dental Practice Act and the jurisprudence affecting same;
2. - 17. ...

18. is free of any communicable or contagious disease, including but not limited to Human Immunodeficiency Virus and Hepatitis B Virus, and provide a notarized certificate of health from a medical doctor relative to his/her physical and mental condition;

19. has completed continuing education equivalent to the state of Louisiana's for the two years prior to applying for licensure by credentials.

B. The applicant must also:

1. show or provide a sworn affidavit that there are no unresolved complaints against him/her;
2. show that his/her professional liability insurance has never been revoked, modified, or nonrenewed;
3. show proof that he/she has not failed the Louisiana State Board of Dentistry clinical licensing examination within the preceding 10 years.

C. Applicants must also meet those requirements set forth in R.S. 37:764 and LAC 46:XXXIII.103.

D. Further, applicants must be in compliance with or not found guilty of any violations of R.S. 37:775 and/or R.S. 37:777.

E. Regardless of the applicant's compliance with the foregoing requirements, the board may refuse to issue a dental or dental hygiene license based on the applicant's credentials for any reason listed in R.S. 37:775 or R.S. 37:777.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:737 (July 1992), amended LR 21:570 (June 1995), LR 22:23 (January 1996), LR 24:

#### **§710. Administration of Local Anesthesia for Dental Purposes**

A. After satisfying the board of his or her competence to administer local anesthesia, a licensed dental hygienist may qualify for a special endorsement to administer local anesthesia for dental procedures under the direct on-premises supervision of a licensed dentist.

B. Competence to administer local anesthesia must be demonstrated to the board by successful completion of a course of study of at least 72 hours of instruction in a formal program in administration of local anesthesia sponsored by an institutional program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board. A certificate of course completion and a copy of the syllabus must be submitted to the board for approval. The course must include didactic studies and clinical experience in the administration of long buccal, maxillary and mandibular infiltration anesthesia; mental block anesthesia; lingual nerve block; and inferior alveolar nerve block anesthesia; medical history and physical evaluation of the patient; and the prevention, diagnosis, and management of medical emergencies which can be encountered in the dental patient. A minimum of 20 satisfactory injections is required.

C. The curriculum for required study must include, but is not necessarily limited to:

1. medical history evaluation procedures;
2. physical evaluation;
3. CPR certification in accordance with board rules;
4. understanding pharmacology of local anesthesia and vasoconstrictors;

5. local anesthesia, didactic, and clinical course:
  - a. anatomy of head, neck, and oral cavity as it relates to administering local anesthetic agents;
  - b. indications and contraindications for administration of local anesthesia;
  - c. selection and preparation of the armamentaria and record keeping for administering various local anesthetic agents;
  - d. medical and legal management complications;
  - e. recognition and management of post-injection complications and management of reactions to injections;
  - f. proper infection control techniques with regard to local anesthesia and proper disposal of sharps;
  - g. methods of administering local anesthetic agents with emphasis on:
    - i. technique;
      - (a). aspiration;
      - (b). slow injection; and
    - ii. minimum effective dosage;
6. medical emergency, prevention, diagnosis, and management.

D. Upon satisfactory completion of the application process, the applicant must pass the board-administered written examination in the administration of local anesthesia.

E. A dental hygienist who has been licensed and trained in a course equivalent to §710.B and C to administer local anesthesia in another state may qualify, at the discretion of the board, to take the exam by presenting written documentation of such licensure and training to the board and documentation of experience in the past two years and by gaining approval of the board through the interview process;

F. A dental hygienist can maintain local anesthesia privileges by administering at least 50 patient visits using local anesthetic injection during the previous five years, documented by a log book to include date of visit, patient name, supervising dentist, purpose of injection, and any adverse reaction or complication. Otherwise, he or she must satisfy the board of competence to administer local anesthesia by successfully completing a course of 72 hours of studies that satisfies the curriculum requirements of §710.

G. A licensed dental hygienist who has demonstrated competence to the satisfaction of the board may qualify for a special endorsement and may undertake the administration of local anesthesia by:

1. successfully completing the written examination administered by the board;
2. substantiating the adequacy of training; and
3. limiting administration of local anesthesia as provided by these rules.

H. The endorsement shall be for a period of five years and renewable with documentation of experience as described in §710.F.

I. Any hygienist who is not certified by the state of Louisiana in local anesthesia and who performs such a procedure is subject to severe sanctions up to and including revocation of his/her license. The dentist under whose instructions he/she performed the procedure will be subject to severe sanctions up to and including revocation of the dentist's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

#### **§714. Administration of Local and/or Block Anesthesia by Dental Hygienists Licensed by Credentials**

Dental hygienists who are licensed in the state of Louisiana by credentials and who have been certified to administer long buccal, maxillary and mandibular infiltration anesthesia; mental block anesthesia; lingual nerve block; and inferior alveolar nerve block anesthesia, in a state of previous licensure, and who wish to administer long buccal, maxillary and mandibular infiltration anesthesia; mental block anesthesia; lingual nerve block; and inferior alveolar nerve block anesthesia in Louisiana, must have gained their certification by successfully completing a course in the administration of anesthesia equivalent to or greater than the course required of Louisiana dental hygienists as set forth in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

#### **Chapter 13. Dental Laser and Air Abrasion Utilization**

##### **§1305. Air Abrasion Units**

Utilization of air abrasion units by licensed dental hygienists and dental auxiliaries is prohibited. However, this does not prevent the utilization of air polishing units by licensed dental hygienists and dental auxiliaries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

#### **Chapter 14. Rulemaking**

##### **§1401. Scope of Chapter**

The rules of this Chapter govern the board's process to consider petitions from interested persons relative to the adoption, amendment, repeal, or applicability of any statutory provision, rule, or order of the board in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:1322 (October 1993), LR 24:

##### **§1403. Forms**

All petitions requesting the adoption, amendment, repeal, or applicability of a rule, statutory provision, or order of the board, shall be submitted on plain white, letter size (8½" by 11") bond; with margins of at least 1 inch on all sides and text double-spaced except as to quotations and other matter customarily single-spaced; shall bear the name, address, and phone number of the person requesting the action; and shall also state the complete and full name of each person(s), organization, or entity the requester represents along with sufficient information to identify and fully describe said person(s), organization, or entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:1322 (October 1993), amended LR 24:

## **Chapter 16. Continuing Education Requirements**

### **§1607. Exemptions**

A. Continuing education requirements shall not apply to:

1. - 2. ...
3. dentists in the first calendar year of their graduation from dental school;
4. dental hygienists in the first calendar year of their graduation from dental hygiene school.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 24:

## **Chapter 16. Continuing Education Requirements**

### **§1611. Continuing Education Requirements for Relicensure of Dentists**

A. Unless exempted under §1607, each dentist shall complete a minimum of 20 hours of continuing education during each calendar year for the renewal of his/her license to practice dentistry. Dentists whose licenses are renewed for a two-year period are allowed to accumulate 40 hours over the two-year period.

B. ...

C. No more than 10 of the required 20 hours can be completed from the following:

1. - 2. ...
3. three credit hours for successful completion of Cardiopulmonary Resuscitation Course "C", Basic Life Support for Healthcare Providers as defined by the American Heart Association or the Red Cross Professional Rescue Course. When being audited for compliance with cardiopulmonary resuscitation course completion, a photocopy of the CPR card evidencing successful completion of the course for each year shall be appended to the form.

D. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR: 20:661 (June 1994), amended LR 21:569 (June 1995), LR 22:24 (January 1996), LR 22:1216 (December 1996), LR 23:1526 (November 1997), LR 24:

### **§1613. Continuing Education Requirements for Relicensure of Dental Hygienists**

A. Unless exempted under §1607, each dental hygienist shall complete a minimum of 12 hours of continuing education during each calendar year for the renewal of his/her license to practice dental hygiene. Dental hygienists whose licenses are renewed for a two-year period are allowed to accumulate 24 hours over the two-year period.

B. ...

C. No more than six of the required 12 hours can be completed from the following:

1. - 2. ...
3. three credit hours for successful completion of Cardiopulmonary Resuscitation Course "C", Basic Life

Support for Healthcare Providers as defined by the American Heart Association or the Red Cross Professional Rescue Course. When being audited for compliance with cardiopulmonary resuscitation course completion, a photocopy of the CPR card evidencing successful completion of the course for each year shall be appended to the form.

D. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR: 20:661 (June 1994), amended LR 21:570 (June 1995), LR 22:24 (January 1996), LR 22:1217 (December 1996), LR 23:1526 (November 1997), LR 24:

### **§1615. Approved Courses**

A. Courses sponsored or approved by the following organizations shall be accepted by the board:

1. - 2. ...

3. Academy of General Dentistry courses when set forth on official documentation;

4. - 9. ...

B. The following standards represent minimum criteria to which component societies, as referred to in §1615.A.7 of this rule, should adhere to if they wish the board to allow the participants to receive continuing education credits.

1. Each sponsoring organization will be responsible for developing its own specific policies for accreditation of continuing education programs and/or activities, and awarding credit hours. These policies must be filed with the board. Satisfactory documentation evidencing approval of continuing education courses must be kept by the sponsoring or approving organization on file for a minimum of four years after the presentation of the course.

2. The program shall be under the continuous guidance of an administrative authority and/or individual responsible for its quality, content, and ongoing conduct.

a. Each program or activity must have specific educational objectives or goals that relate to the dental as well as the overall healthcare needs of the public and/or the interest and needs of the dental profession. The content of the program will be directed at achieving the stated objectives or goals.

b. The instructor or instructors in charge of the program or activity must be qualified by education to provide instruction in the relevant subject matter.

c. Facilities selected for each activity must be appropriate to accomplish:

i. the educational methods being used;

ii. the stated educational objectives or goals.

C. In general, continuing education activities shall be made available to all dental healthcare workers. The board does recognize that facilities and the number of instructors may limit the number of participants.

D. Clinical credit will only be given to lectures and/or participation programs or activities that deal with the actual delivery of dental services to the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR: 20:662 (June 1994), amended LR 22:24 (January 1996), LR 24:

## **Chapter 17. Licensure Examinations**

### **§1701. Scope of Chapter**

This Chapter shall describe all procedures relative to the administration of the clinical licensing examinations for persons wishing to practice dentistry or dental hygiene in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

### **§1703. Candidate's Manual for the Dental Licensure Examination of the Louisiana State Board of Dentistry**

This manual is too voluminous to print in LAC 46:XXXIII. Section 1703 is intended to put the public on notice that the board utilizes examination manuals which are revised every year. A copy is on file with the Office of the State Register; and copies may be obtained from the board office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

### **§1705. Candidate's Manual for the Dental Hygiene Licensure Examination of the Louisiana State Board of Dentistry**

This manual is too voluminous to print in LAC 46:XXXIII. Section 1705 is intended to put the public on notice that the board utilizes examination manuals which are revised every year. A copy is on file with the Office of the State Register; and copies may be obtained from the board office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

### **§1707. Religious Obligations**

There will be no exceptions relative to religious obligations in the conducting of the clinical licensing examinations of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

### **§1709. Examination of Dentists**

A. Any person desiring to be licensed as a dentist shall apply to the board to take the licensure examination and shall verify the information required on the application by oath. The application shall include two recent photographs. There shall be an application fee set by the board not to exceed \$600 which shall be nonrefundable. There shall also be an examination fee set by the Louisiana State University School of Dentistry which shall not exceed \$200 and which may be refundable if the applicant is found ineligible to take the examination.

B. An applicant shall be entitled to take the examinations required in this Section to practice dentistry in this state if such applicant:

1. is 18 years of age or older;
2. is of good moral character;
3. is a graduate of a dental school accredited by the Commission on Dental Accreditation of the American Dental

Association or its successor agency, if any, or any other nationally recognized accrediting agency; and

4. has successfully completed the National Board of Dental Examiners Dental Examination within 10 years of the date of application.

C. To be licensed as a dentist in this state, an applicant must successfully complete the clinical licensing examination.

D. The board is expressly authorized to utilize the services of other Louisiana licensed dentists to facilitate the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

### **§1711. Examination of Dental Hygienists**

A. Any person desiring to be licensed as a dental hygienist shall apply to the board to take the licensure examination and shall verify the information required on the application by oath. The application shall include two recent photographs of the applicant. There shall be a nonrefundable application fee not to exceed \$400, and a clinical fee payable to the Louisiana State University School of Dentistry which shall not exceed \$100 and which may be refundable if the applicant is found ineligible to take the examination.

B. An applicant shall be entitled to take the examinations required in this Section to practice dental hygiene in this state if such applicant:

1. is 18 years of age or older;
2. is of good moral character;
3. is a graduate of a dental hygiene college or school approved by the board or accredited by the Commission on Accreditation of the American Dental Association or its successor agency; and

4. has successfully completed the National Board of Dental Hygiene Examiners Dental Examination within 10 years of the date of application.

C. To be licensed as a dental hygienist in this state, an applicant must successfully complete the following:

1. a written examination on the jurisprudence and ethics of the state regulating the practice of dental hygiene;
2. a practical or clinical examination which shall test the competency of the applicant's ability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:

Interested persons may submit written comments on this proposed rule to C. Barry Ogden, Executive Director, Louisiana State Board of Dentistry, 1515 Poydras Street, Suite 1850, New Orleans, LA 70112. Written comments must be submitted to and received by the board within 60 days of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of this notice.

C. Barry Ogden  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Comprehensive Rule Revisions**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS)  
TO STATE OR LOCAL GOVERNMENTAL UNITS  
(Summary)**

A cost of \$1,280 is estimated to publish this notice of intent and final rule. Notification of this rule change will be provided to our licensees via newsletter and/or pamphlet which is already budgeted.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS  
OF STATE OR LOCAL GOVERNMENTAL UNITS  
(Summary)**

There will be no effect on revenue collections by the Louisiana State Board of Dentistry or any other state or local governmental unit.

**III. ESTIMATED COSTS AND/OR ECONOMIC  
BENEFITS TO DIRECTLY AFFECTED PERSONS OR  
NONGOVERNMENTAL GROUPS (Summary)**

Re: §103—This change will allow applicants to take our licensing examination who will graduate from dental school or dental hygiene school within 90 days from the date the examination is administered. This will help those applicants in that they will not have to wait a full year to take the clinical licensing examination.

Re: §110—If it becomes necessary for the board to suspend or revoke a license for failure to comply with this rule, those persons would suffer an economic loss.

Re: §415—There will be an increase of \$200 to persons taking the Louisiana State Board of Dentistry clinical licensing examination.

Re: §419—There will be an increase of \$25 to persons taking the Louisiana State Board of Dentistry dental hygiene clinical licensing examination.

Re: §502—Dentists who utilize the services of expanded duty dental assistants have a potential for economic benefit as a result of cost savings which may or may not be passed on to the patient who would in turn benefit as well.

Re: §701—Dentists who utilize the services of dental hygienists have a potential for economic benefit as a result of cost savings which may or may not be passed on to the patient who would in turn benefit as well.

Re: §710 and §714—There will be an economic benefit to 1) dentists employing dental hygienists; 2) dental hygienists; and 3) patients. There will be no costs and/or economic benefits to other nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND  
EMPLOYMENT (Summary)**

There will be no effect on competition and employment.

C. Barry Ogden  
Executive Director  
9801#007

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Pharmacy**

Pharmacy Records—Transfer of Prescription  
Information (LAC 46:LIII.2929)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Pharmacy Law, R.S. 37:1178, the Board of Pharmacy hereby gives notice to amend LAC 46:LIII.2929.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIII. Pharmacists**

**Chapter 29. Pharmacy Records**

**§2929. Transfer of Prescription Information**

A.1. - 2. ...

a. Pharmacies electronically accessing the same prescription drug records may transfer up to the maximum refills permitted by law and the prescriber's authorization.

3. - 4. ...

B. Manual Filing System. If a pharmacy maintains prescription information in a manual system, the transfers are subject to the following requirements.

1. - 2.b.ii. ...

iii. number of valid refills remaining, the date of last refill and, if a controlled substance, date(s), and location(s) of previous refill(s).

iv. - v. ...

C. Computerized Filing System. If a pharmacy maintains prescription information in a data processing system, the transfers are subject to the following requirements:

1. - 2. ...

3. The data processing system shall have a mechanism to prohibit the transfer of controlled substance prescriptions which have previously been transferred, unless the pharmacy can electronically access the prescription drug records at the pharmacy from which a transfer is requested.

4. The original prescription, in a data processing system, which has been transferred must be invalidated in the data processing for purposes of refilling unless other pharmacies may electronically access the prescription drug records for purposes of transfer. All required information must be maintained for at least five years.

5. ...

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 15:967 (November 1989), amended LR 24:

Any person may submit data, views, or positions orally or in writing to Fred H. Mills, Jr., Executive Director, 5615 Corporate Boulevard, Suite 8E, Baton Rouge, LA 70808, phone (504) 925-6496. Comments will be accepted through 4 p.m. on February 20, 1998.

Under the provisions of the Administrative Procedure Act, if a public hearing is necessary, it will be held from 10 a.m. to 12 noon, Wednesday, February 25, 1998, at the Board of Pharmacy office, 5615 Corporate Boulevard, Suite 8E, Baton Rouge, LA 70808, phone (504) 925-6496.

Fred H. Mills, Jr.  
Executive Director



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Pharmacy Records—Transfer of  
Prescription Information**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The only cost associated with the implementation of the proposed amendment of LAC 46:LIII.2929 will be the cost of printing and distribution of the new regulation. It is estimated that the *Louisiana Register* cost of \$300, printing cost of \$500, and postage for distribution is estimated at \$640; or, a total of \$1,440 will be expended in FY 97/98.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF  
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This proposed amendment would have no effect on any revenue collections for this board or any state or local government entity.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS  
TO DIRECTLY AFFECTED PERSONS OR  
NONGOVERNMENTAL GROUPS (Summary)**

There are no economic benefits to be gained by this regulation.

**IV. ESTIMATED EFFECT ON COMPETITION AND  
EMPLOYMENT (Summary)**

There will be no effect on competition or employment.

Fred H. Mills, Jr.  
Executive Director  
9801#024

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Pharmacy**

Provisional Community Pharmacy  
(LAC 46:LIII.Chapter 14)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Pharmacy Law, R.S. 37:1178, the Board of Pharmacy hereby gives notice to adopt LAC 46:LIII.Chapter 14 (Provisional Community Pharmacy).

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIII. Pharmacists**

**Chapter 14. Provisional Community Pharmacy**

**§1401. Provisional Community Pharmacy**

*Provisional Community Pharmacy*—the practice of pharmacy at a site where prescriptions are dispensed free of charge to appropriately screened and qualified indigent patients.

*Qualified Patients*—those patients not served by Medicaid/Medicare, uninsured, and with insufficient funds, as determined by strict screening guidelines, to obtain needed medications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 24:

**§1403. Provisional Community Pharmacy Permit**

A. A provisional community pharmacy permit shall be required to operate a pharmacy in the state to transact business by dispensing free prescription drugs to patients in Louisiana. This permit shall only be granted to an organization qualified as a charitable organization in the Internal Revenue Code under §501(c)(3).

B. Permit Fee. The provisional community pharmacy permit fee shall be determined by the legislature and/or the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 24:

**§1405. Compliance**

The provisional community pharmacy must be in compliance with applicable federal, and state laws and/or regulations pertaining to the practice of pharmacy, except as exempted in §1407.C. All screening guidelines and revisions shall be submitted to the board upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 24:

**§1407. Additional Requirements**

A. Parenteral/Enteral dispensing. A provisional community pharmacy engaging in the dispensing of parenteral/enteral preparations as defined in §2101, shall obtain a parenteral/enteral permit and comply with all requirements in LAC 46:LIII.Chapter 21.

B. Accessibility. A provisional community pharmacy shall be directly accessible to the general public.

C. Pharmacy Operations. A provisional community pharmacy shall comply with the provisions of LAC 46:LIII.Chapter 11, with the exception of §§1103 and 1127.8.b.i and ii, with written board approval, in order to provide free medications to qualified indigent patients.

D. Prescription Legend Drug Samples. A provisional community pharmacy may not sell, purchase, trade, or possess prescription legend drug samples, unless the following conditions are satisfied:

1. The prescription legend drug samples are dispensed at no charge to the qualified indigent patient of the provisional community pharmacy.

2. The prescription legend drug samples are possessed in compliance with the federal Prescription Drug Marketing Act of 1986.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 24:

Any person may submit data, views, or positions orally or in writing to Fred H. Mills, Jr., Executive Director, 5615 Corporate Boulevard, Suite 8E, Baton Rouge, LA 70808, phone (504) 925-6496. Comments will be accepted through 4 p.m. on February 20, 1998.

Under the provisions of the Administrative Procedure Act, if a public hearing is necessary, it will be held from 10 a.m. to 12 noon, Wednesday, February 25, 1998, at the Board of

Fred H. Mills, Jr.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Provisional Community Pharmacy**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The only cost associated with the adoption of Chapter 14, Provisional Pharmacy Permit, will be the cost of printing and distribution of the new regulation. It is estimated that the *Louisiana Register* cost of \$300, printing cost of \$500, and postage for distribution is estimated at \$640; or, a total of \$1,440 will be expended in FY 97/98.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Revenue collections will be the collections of fees to permit these provisional pharmacy permits. Projection for fiscal year 1998-1999 is \$1,000. Projection for fiscal year 1999-2000 is \$1,400.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The proposed regulation may have a positive economic benefit for affected persons. Many Louisiana citizens cannot afford necessary prescription medications; this modification will allow the board to permit and regulate free pharmacy services to the indigent who are unable to qualify for Medicaid services.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no effect on competition or employment.

Fred H. Mills, Jr.  
Executive Director  
9801#023

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Pharmacy**

**Schedule Drug Prescriptions (LAC 46:LIII.3531)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and Pharmacy Law, R.S. 37:1178, the Board of Pharmacy hereby gives notice to amend LAC 46:LIII. 3531.

*(Editor's Note:* Section 3531 is being published in full to reflect new codification, with the agency being charged for the amended portion only; therefore the agency's fiscal impact [printing, etc.] remains the same.

The revisions to §3531 refine accessibility of controlled substances in: emergency situations; for hospice patients; and for patients in long term care facilities. Revision of §3531 reflects advances in communications technology via facsimile. The revision also eliminates the duplication of paperwork.)

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS  
Part LIII. Pharmacists**

**Chapter 35. Pharmacy Prescription Drugs**

**§3531. Schedule Drug Prescription Requirements**

A. A schedule drug prescription or order must be issued for a legitimate medical purpose by a licensed medical practitioner in the usual course of professional practice and dispensed by a licensed pharmacist.

B. Schedule Drug Prescription Form. Schedule drug prescriptions/orders shall be written or reduced to writing with ink, indelible pencil, or typewritten in compliance with the following form:

1. patient's:
  - a. full name; and
  - b. address;
2. schedule drug:
  - a. name;
  - b. strength;
  - c. quantity;
  - d. instructions; and
  - e. dosage form;
3. authorized prescriber's:
  - a. full name;
  - b. address;
  - c. signature for Schedule II drugs; and
  - d. DEA registration number.

C. Schedule II Drug Prescriptions or Orders. Schedule II prescriptions must be issued and signed by an authorized practitioner.

1. Schedule II Drug Oral Prescriptions/Orders. A pharmacist may dispense an oral Schedule II controlled substance prescription authorized by a medical practitioner, in the case of a bona fide emergency situation, upon a prescribing practitioner's verbal authorization.

2. Emergency. A bona fide emergency situation exists when:

- a. need—schedule drug administration is necessary for immediate treatment;
- b. availability—non-available appropriate alternate treatment;
- c. reasonable—the prescribing practitioner cannot reasonably provide a written prescription.

3. Adequate Regime. Dispense a limited amount of schedule drugs to treat the patient during the emergency period.

4. Reduced to Writing. An oral prescription/order shall be immediately reduced to writing, in proper form, by the dispensing pharmacist with his signature.

5. Verification. A pharmacist shall verify the authenticity of a verbal Schedule II prescription/order.

6. Schedule Prescription Retrieval. A signed written Schedule II prescription/order, in proper form, shall be received from the practitioner within seven days.

7. Schedule II Prescriptions/Orders. Schedule II prescriptions are non-refillable.

8. **Schedule II Drug Via Facsimile.** A prescription written for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided that the original signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in §3531.C.8.a and b.

a. A prescription written for a Schedule II narcotic substance to be compounded for direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by the practitioner or his agent to the pharmacy by facsimile. The facsimile serves as the original written prescription.

b. A prescription written for a Schedule II narcotic substance for a hospice or terminally ill patient may be transmitted by the practitioner or his agent to the dispensing pharmacy by facsimile. The practitioner or his agent will note on the prescription that the patient is a hospice or terminally ill patient. The facsimile serves as the original written prescription.

9. **Schedule II Drug/Partial Filling.** A prescription written for a Schedule II controlled substance for a patient in a Long Term Care Facility (LTCF) or for a patient with a terminal illness may be filled in partial quantities. The pharmacist must record on the prescription whether the patient is terminally ill or an LTCF patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of schedule II controlled substance dispensed in all partial fillings must not exceed the total quantity prescribed and must be executed within 60 days from the date of issue.

D. **Schedule III/IV Prescriptions/Orders.** Schedule III and IV prescriptions may be issued upon oral or written orders of an authorized practitioner.

1. **Schedule III/IV Oral Prescriptions/Orders.** Oral prescriptions/orders shall be promptly reduced to writing.

2. **Refillable Schedule III/IV Prescriptions/Orders.** Schedule III and IV prescriptions are refillable, with appropriate authorization.

3. **Schedule III/IV Prescription Order Form.** Schedule III and IV prescriptions shall conform to the following.

a. **Authorized Practitioners Instructions—Refillable Authority.** An authorized practitioner must orally approve or inscribe refillable instructions on the face of the prescription or order. In the absence of specific refill instructions, the prescription is non-refillable.

b. **Refillable Prescription Period.** Schedule III, IV, and V prescriptions shall not be refilled more than five times within six months of the date of issue. Schedules III, IV, and V prescriptions shall become null and void after six months or after five authorized refills, whichever comes first.

c. **Schedule III/IV/V Prescription Refill Records.** The pharmacist dispensing Schedule III, IV, and V prescriptions shall note on the reverse side of the original prescription refill information such as date, with quantity or variation of quantity

dispensed, and pharmacist's name or initials or the same notations shall be made into a computer system.

E. **Schedule Prescription Drug Labeling.** A schedule prescription label shall be affixed to a suitable container and exhibit the following information:

1. pharmacy name;
2. pharmacy address;
3. date filled or refilled;
4. serial number;
5. patient's name;
6. authorized prescriber's name;
7. drug name and strength;
8. direction;
9. pharmacist's last name and initial; and
10. federal transfer caution label.

F. **Schedule V Drugs.** Schedule V dispensing requires a prescription except for the following:

1. **Schedule V Exempt Narcotics.** Exempt narcotics are preparations dispensed without a prescription containing limited quantities of certain narcotic drugs dispensed by a licensed pharmacist, generally for antidiarrheal purposes, to a person of majority with suitable identification and the transaction properly recorded in a bound Schedule V Exempt Narcotic Book containing the name and address of purchaser, and name and quantity of exempt narcotic dispensed, with the date of sale and the dispensing pharmacist's name or initials.

2. **Schedule V Exempt Preparation.** An exempt narcotic transaction shall not exceed 240 cc/ml. (8 fluid ounces), or not more than 48 solid dosage units, which may be dispensed to the same person in any given 48-hour period, containing limited narcotic quantities with non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone.

3. **Exempt Narcotic Record.** A bound Exempt Narcotic Book shall be maintained in the pharmacy for exempt Schedule V drugs sold, with purchaser's name and address, date of sale, name and quantity of exempt narcotic dispensed and the pharmacist's initials. The exempt narcotic book shall be maintained for a period of five years from the date of the last entered transaction, and shall be made available for board inspection.

4. **Identification.** The pharmacist must ascertain suitable identification of buyer and proof of age, when appropriate.

5. **Authorized Dispensing.** Schedule V exempt narcotic preparations must be dispensed by a pharmacist.

G. **Schedule Prescription Files.** Schedule prescription files must be maintained on premises.

1. **Schedule II Prescription Files.** Schedule II prescriptions shall be maintained separately from other prescription records and contain the name or initials of the pharmacist that dispensed the prescription.

2. **Schedule III, IV, and V Prescription Files.** Schedule III, IV, and V dispensed prescriptions may be filed separately, or, in the alternative, they may be filed in numerical sequence with either Schedule II prescriptions or with noncontrolled prescriptions. When filed with other prescriptions, Schedule III, IV and V prescriptions must be stamped with a red-inked

"C" at least one inch high in the lower right-hand corner of the prescriptions. However, if a pharmacy maintains computerized dispensing records, then the requirement to mark the hard copy prescription with a red "C" is waived. Dispensing pharmacists' name or initials and dispensing date shall be placed on the prescription.

3. Schedule III, IV, and V Prescription Files Maintenance. Schedule III, IV, and V prescription files must be maintained in a readily available and retrievable manner.

#### H. Record Keeping

1. Registrant must maintain readily retrievable, complete and accurate transaction records, as follows:

- a. DEA order forms;
- b. Schedule II receiving invoices shall be maintained separately. Schedule III, IV, and V receiving invoices may be maintained with general records and shall be readily retrievable;
- c. schedule drug prescription files;
- d. schedule drug inventories—initial, annual, and current.

2. Schedule Drugs Inventory Records. Schedule drug inventories must be complete and reflect an accurate accounting of schedule drug transactions.

a. Inventory Content. The inventory record shall reflect the following:

- i. an accurate schedule drug inventory shall comprise the drug name, strength, and correct accounting supported with invoices, prescriptions/orders, and/or transfers;
- ii. registrant's name;
- iii. registrant's DEA number;
- iv. inventory date;
- v. inventory period;
- vi. available prior inventory;
- vii. preparer's signature;
- viii. inventory records shall be maintained for five years.

b. Initial Inventory Record. An initial schedule drug physical inventory shall be conducted when the registrant commences to dispense schedule prescriptions.

c. Annual Inventory Records. A complete and accurate Schedule II drug physical inventory shall be conducted annually following the anniversary date of the initial inventory.

d. Biennial Inventory Record. An estimated Schedule III, IV, and V drug physical inventory shall be conducted biennially following the anniversary date of the initial inventory, unless the container holds more than 1,000 tablets or capsules in which case an exact inventory shall be made.

e. Schedule Drug Theft Inventory. A schedule drug inventory shall be conducted when there is a loss or theft of schedule drugs and reported to the Regional DEA office on DEA Form 106, and a copy sent to the board.

f. Business Termination Inventory. A schedule CDS inventory must be taken when a registrant's pharmacy is sold, exchanged, assigned, closed, or transferred, with a copy mailed to the board and the DEA.

g. Pharmacist-in-Charge Termination Inventory. A schedule drug inventory must be conducted by the outgoing

pharmacist-in-charge and verified by the incoming pharmacist-in-charge.

h. Schedule Drugs Central Records. Schedule Drug Central Records repository shall be permitted upon board and DEA approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 24:

Any person may submit data, views or positions orally or in writing to Fred H. Mills, Jr., Executive Director, 5615 Corporate Boulevard, Suite 8E, Baton Rouge, LA 70808, phone (504) 925-6496. Comments will be accepted through 4 p.m. on February 20, 1998.

Under the provisions of the Administrative Procedure Act, if a public hearing is necessary, it will be held from 10 a.m. to 12 noon, Wednesday, February 25, 1998, at the Board of Pharmacy Office, 5615 Corporate Boulevard, Suite 8E, Baton Rouge, LA 70808, phone (504) 925-6496.

Fred H. Mills, Jr.  
Executive Director

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Drug Prescriptions

##### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The only cost associated with the implementation of the proposed LAC 46:LIII.3531 amendment will be the cost of printing and distribution of the new regulation. It is estimated that the *Louisiana Register* publication cost of \$300, printing cost of \$500, and postage for distribution is estimated at \$640; or, a total of \$1,440 will be expended in FY 97/98.

##### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed amendment would have no effect on any revenue collections for this board or any state or local governmental entity.

##### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no economic benefits to be gained by this proposed regulation.

##### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment.

Fred H. Mills, Jr.  
Executive Director  
9801#022

Richard W. England  
Assistant to  
Legislative Fiscal Officer

#### NOTICE OF INTENT

#### Department of Health and Hospitals Board of Pharmacy

Transmission of Prescriptions (LAC 46:LIII.1111)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and Pharmacy Law,

R.S. 37:1178, the Board of Pharmacy hereby gives notice to amend LAC 46:LIII.1111.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIII. Pharmacists**

**Chapter 11. Pharmacies**

**§1111. Transmission of Prescriptions**

A. ...

1. - 2. ...

3. Electronic Transmission. A pharmacist may receive and dispense a bona fide prescription communicated from a practitioner, via facsimile or other means, and then reduce to hard copy if necessary. When receiving a prescription transmitted in this manner, the pharmacist must indicate on the hard copy the mode of transmission as well as the phone number of the practitioner making the transmission.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:1311 (October 1997), amended LR 24:

Any person may submit data, views or positions orally or in writing to Fred H. Mills, Executive Director, 5615 Corporate Boulevard, Suite 8E, Baton Rouge, LA 70808, phone (504) 925-6496. Comments will be accepted through 4 p.m. on February 20, 1998.

Under the provisions of the Administrative Procedure Act, if a public hearing is necessary, it will be held from 10 a.m. to 12 noon, Wednesday, February 25, 1998, at the Board of Pharmacy office, 5615 Corporate Boulevard, Suite 8E, Baton Rouge, LA 70808, phone (504) 925-6496.

Fred H. Mills, Jr.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Transmission of Prescriptions**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The only cost associated with the implementation of the proposed amendment of LAC 46:LIII.1111 will be the cost of printing and distribution of the new regulation. It is estimated that the *Louisiana Register* cost of \$300; printing cost of \$500; and postage for distribution estimated at \$640; or a total of \$1,440 will be expended in FY 97/98.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This proposed amendment would have no effect on any revenue collections for this board or any state or local governmental entity.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no economic benefits to be gained by this regulation.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on competition or employment.

Fred H. Mills, Jr.  
Executive Director  
9801#021

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

Boarding and Nonboarding Animals  
(LAC 46:LXXXV.700 and 702)

The Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.700 and 702 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

The proposed amendments define the care that may be provided to boarding and nonboarding animals by Registered Veterinary Technicians (RVT) and lay persons with and without the direct supervision of a licensed veterinarian, as well as clearly stating the ultimate responsibility the licensed veterinarian has for the proper diagnosis and treatment of the animal. Under current rules, there are very few tasks that can be performed by RVTs and/or lay persons without a licensed veterinarian on the premises. The proposed rule is intended to provide more flexibility to veterinarians in providing for care of animals who are boarded or hospitalized while at the same time maintaining adequate standards of care.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 7. Veterinary Practice**

**§700. Definitions**

\*\*\*

*Boarding Animal*—an animal which is being housed at a veterinary facility and is not actively undergoing diagnosis or treatment for illness. A boarding animal which becomes ill while in a veterinary facility ceases to be a boarding animal under this definition.

\*\*\*

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1328 (October 1993), amended LR 20:1381 (December 1994), LR 24:

**§702. Direct Supervision**

A. - C. ...

D. A Registered Veterinary Technician (RVT) as defined in §700 shall perform all tasks or procedures under direct supervision of a licensed veterinarian, except:

1. an RVT may perform the duties listed in §702.F.1 without the direct supervision of a licensed veterinarian, but the RVT is required to follow the record keeping requirements found in §702.F.3; and

2. an RVT may administer medications and/or treatments to nonboarding (hospitalized or ill) animals without direct supervision by a licensed veterinarian under the following conditions:

a. the licensed veterinarian must chart the precise treatment plan to be used in the animal's medical record. This treatment plan may include oral, topical, and injectable treatments, including fluid therapy;

b. no diagnostic decisions or treatment changes may be made by an RVT;

c. the licensed veterinarian must personally check the animal and update the treatment plan at least once every 24 hours;

d. the licensed veterinarian has the ultimate responsibility for the proper diagnosis and treatment of the animal, including the work delegated to the RVT;

e. the licensed veterinarian has the responsibility to verify that any person who is assigned duties under §702 is legally licensed in Louisiana as an RVT. Failure to verify this information shall be considered unprofessional conduct within the meaning of R.S. 37:1526;

f. if the animal's medical condition changes, the licensed veterinarian must be available for consultation and reevaluation of the animal.

E. ...

F. A lay person shall perform all tasks or procedures under direct supervision of a licensed veterinarian under the following conditions and with the exception described in §702.F.1:

1. a lay person may administer medications to boarding animals without direct supervision by a licensed veterinarian if the medication is directed to be used orally or topically and if the licensed veterinarian has recorded the exact treatments to be given in the animal's medical record;

2. when a lay person administers medications to nonboarding animals under the direct supervision of a licensed veterinarian, the licensed veterinarian must personally check the animal and update the treatment plan in the medical record at least once every 24 hours;

3. when a lay person administers medications, with or without direct supervision, the lay person shall keep a written record of all treatments which are performed, and that written record shall be incorporated into the animal's medical record;

4. the licensed veterinarian has the ultimate responsibility for the proper diagnosis and treatment of the animal, including the work delegated to a lay person.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 8:65 (February 1982), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:225 (March 1990), LR 19:1328 (October 1993), LR 24:

Interested parties may submit written comments to Charles B. Mann, Executive Director, Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on February 26, 1998.

A public hearing on the proposed changes will be held on February 26, 1998, at 9 a.m. at the office of the Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

Charles B. Mann  
Executive Director

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Boarding and Nonboarding Animals**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendments (estimated \$160). The veterinary profession will be informed of this proposed rule change via the board's regular newsletter, which is already a budgeted cost of the board.

#### **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. There will be no revenue impact as no increase in fees will result from these amendments.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Licensed veterinarians, registered veterinary technicians, and lay persons employed by the veterinarians will be affected by the proposed action. However, no costs are anticipated to affect these persons unless a licensed veterinarian chooses to hire a registered veterinary technician in light of the RVT's authorization to administer medications and/or treatments to nonboarding animals without direct supervision under the conditions prescribed in the amendments. There is no requirement for a licensed veterinarian to hire an RVT.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

No impact on competition and employment is anticipated as a result of the proposed rule changes, although RVTs may find some increased employment opportunities because of the slightly expanded authority these proposed amendments give them.

Charles B. Mann  
Executive Director  
9801#017

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

## NOTICE OF INTENT

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

Complaint Review Committee  
Appointments (LAC 46:LXXXV.106)

The Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.106 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

The proposed amendment provides for a nonveterinarian to serve on the Complaint Review Committee. This committee is chaired by a member of the board and assists the board member in conducting investigations for the purpose of discovering violations of the statutes and rules governing the practice of veterinary medicine. The proposed rule further provides that this public member will, preferably, have experience in social work and/or grief counseling. This preference recognizes that many complaints involve persons who are grieving over the death of an animal and that the board needs to be sensitive to this fact. By providing for the appointment of a nonveterinarian to the Complaint Review Committee, the board is recognizing that its mission is to protect the public and that a nonveterinary perspective in the review of complaints is important for the fulfillment of its responsibilities.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXXV. Veterinarians

### Chapter 1. Operations of the Board of Veterinary Medicine

#### §106. Complaint Resolution and Disciplinary Procedures

A. ...

B. Appointing a Complaint Review Committee

1. As provided by R.S. 37:1518, the board may appoint a committee of persons to conduct investigations for the purpose of discovering violations of the statutes and rules governing the practice of veterinary medicine. Any committee so appointed shall be chaired by a member of the board who will select two practicing veterinarians and one nonveterinarian who, preferably, has experience in social work and/or grief counseling to serve as committee members.

2. - 3. ...

C. - D.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:345 (March 1993), amended LR 23:967 (August 1997), LR 24:

Interested parties may submit written comments to Charles B. Mann, Executive Director, Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on February 26, 1998.

A public hearing on the proposed changes will be held on February 26, 1998, at 9 a.m. at the office of the Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

Charles B. Mann  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Complaint Review Committee Appointments

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no material costs or savings to state or local governmental units, except for those associated with publishing the amendments (estimated \$80). The veterinary profession will be informed of this proposed rule change via the board's regular newsletter, which is already a budgeted cost of the board.
- 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. There will be no revenue impact as no increase in fees will result from these amendments.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will be no costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will be no effect on employment and competition.

Charles B. Mann  
Executive Director  
9801#015

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

## NOTICE OF INTENT

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

License Renewal  
(LAC 46:LXXXV.305)

The Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.305 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

The proposed amendments are intended to make clear that licenses to practice veterinary medicine expire on September 30 of each year unless properly renewed before that date; to clarify the procedures for notifying licensees of board action to suspend or revoke a license for failure to properly renew it; to provide for the suspension or revocation of a license for failure to properly renew it; and to make clear

that a suspension based on the failure to properly renew a license may be reversed by submitting a complete license renewal application and payment of all applicable fees.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 3. Licensure Procedures**

**§305. Renewals**

A. Pursuant to R.S. 37:1524 and R.S. 37:1525, all licenses must be renewed annually. Failure to renew a license shall be considered a violation of the rules of professional conduct. All licenses expire on September 30 of each year unless properly renewed before that date. Licenses which are not renewed by September 30 annually shall be suspended by majority vote of the board at the next available board meeting or revoked by majority vote of the board at the next available board meeting. Suspensions for nonrenewal may be reversed by submitting a complete license renewal application and payment of all applicable fees.

B. Persons failing to annually renew their license by September 30 will receive one notification via certified mail prior to an initial suspension or prior to a revocation of the license. Such notice shall be mailed at least 15 days prior to either the suspension or revocation of the license. Such notice will advise of actions to be taken by the board in conjunction with the failure to renew. These actions may include the imposition of a late fee and/or a fine for reinstatement of the license. The board may also elect to publish, in its own newsletter and/or publications of the Louisiana Veterinary Medical Association (LVMA), and distribute to other parties, the names of such persons holding suspended or revoked licenses. The distribution of this list may include, but is not limited to, the Office of State Narcotics, the federal Drug Enforcement Administration, and Food and Drug Administration, drug supply wholesalers, veterinary supply wholesalers, the Board of Pharmacy, and the LVMA.

C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:343 (March 1993), amended LR 23:965 (August 1997), LR 24:

Interested parties may submit written comments to Charles B. Mann, Executive Director, Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on February 26, 1998.

A public hearing on the proposed changes will be held on February 26, 1998, at 9 a.m. at the office of the Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

Charles B. Mann  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT**  
**FOR ADMINISTRATIVE RULES**

**RULE TITLE: License Renewal**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendments (estimated \$100). The veterinary profession will be informed of this proposed rule change via the board's regular newsletter, which is already a budgeted cost of the board.
- 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. There will be no revenue impact as no increase in fees will result from these amendments.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will be no costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will be no effect on employment and competition.

Charles B. Mann  
Executive Director  
9801#018

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

Over-the-Counter Drugs and Record  
Keeping (LAC 46:LXXXV.700 and 701)

The Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.700 and 701 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

The proposed amendments define Over-The-Counter (OTC) drugs as any product that is sold to the public that is not regulated as a legend drug or as a controlled substance and state the record keeping requirements for such products. The proposed amendment to §701.A exempts over-the-counter products from record keeping requirements found in §701, except when an OTC product is prescribed as part of a treatment regimen or if an OTC product is dispensed and directed to be used in any manner not on the product's label, in which case it must be treated as a legend drug and recorded in accordance with §701.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 7. Veterinary Practice**

**§700. Definitions**

\* \* \*

*Over-The-Counter (OTC) Product*—any product that is sold to the public that is not regulated as a legend drug or as a controlled substance.



\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1328 (October 1993), amended LR 20:1381 (December 1994), LR 24:

**§701. Record Keeping**

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

c. The record keeping requirements contained in §701 do not apply to Over-The-Counter (OTC) products except:

i. if an OTC product has been prescribed by the licensed veterinarian as part of a treatment regimen, then the sale and instructions must be recorded in the medical record in accordance with §701.A.1.a; or

ii. if a licensed veterinarian dispenses an OTC product and directs the client to use the product in any manner not on the product's label, then the product must be treated as a legend drug and its use must be properly recorded in the animal's medical record in accordance with §701.A.1.a.

2. ...

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 6:71 (February 1980), amended by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 16:225 (March 1990), LR 19:1329 (October 1993), LR 20:1381 (December 1994), LR 23:969 (August 1997), LR 24:

Interested parties may submit written comments to Charles B. Mann, Executive Director, Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on February 26, 1998.

A public hearing on the proposed changes will be held on February 26, 1998, at 9 a.m. at the office of the Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

Charles B. Mann  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Over-the-Counter Drugs and Record Keeping**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendments (estimated \$100). The veterinary profession will be informed of this proposed rule change via the board's regular newsletter, which is already a budgeted cost of the board.

**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. There will be no revenue impact as no increase in fees will result from these amendments.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There will be no costs and/or economic benefits to directly affected persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on employment and competition.

Charles B. Mann  
Executive Director  
9801#016

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of Public Health**

Drinking Water Revolving Fund (LAC 48:V.7801-7811)

Under the authority of the Drinking Water Revolving Loan Fund Act, R.S. 40:2821 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health gives notice that rulemaking procedures have been initiated to adopt the Drinking Water Revolving Loan Fund regulations, LAC 48:V.Chapter 78.

This proposed rule establishes requirements for participation in the Drinking Water Revolving Loan Fund program as authorized under the Safe Drinking Water Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature, R.S. 40:2821 et seq. The Drinking Water Revolving Loan Fund will provide financial assistance to qualified borrowers for the construction of eligible drinking water facilities.

The proposed rule provides information relating to eligibility of projects, application requirements, project priority ratings, engineering and environmental reviews, loan conditions, and construction inspections. The basis and rationale for this proposed rule are to implement the Drinking Water Loan Fund program as authorized by the Safe Drinking Water Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature, R.S. 40:2821 et seq., and to provide the mechanism for the state to qualify for federal funds that will provide financial assistance to water systems for the construction of eligible drinking water facilities.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part V. Health Services**

**Subpart 25. Drinking Water**

**Chapter 78. Drinking Water Revolving Loan Fund**

**§7801. Introduction**

A. The Department of Health and Hospitals, Office of Public Health (OPH) is the state agency within Louisiana granted primary enforcement responsibility from the United States Environmental Protection Agency (EPA) to ensure that Public Water Systems (PWSs) within the state are in compliance with state drinking water regulations which equal or exceed federal drinking water regulations adopted in

accordance with the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f et seq.). The SDWA Amendments of 1996 authorized a state revolving loan fund program to assist water systems in financing the costs of infrastructure improvements to facilitate compliance with and further the health protection objectives of the SDWA.

B. In accordance with the Louisiana Constitution and authorizing legislation, the Department of Environmental Quality (DEQ) is assisting OPH in the financial administration of the Drinking Water Revolving Loan Fund (the fund). Regulations governing the revolving loan fund program are promulgated by both OPH and DEQ.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

### §7803. Authority

Act 480 of the 1997 Regular Session of the Louisiana Legislature amended and reenacted R.S. 30:2011(A)(3) and (D)(23), 2073(8), 2074(A)(4), 2078(A), and (B)(1), the introductory paragraph of (B)(2), (B)(2)(a) and (I), (B)(3), and (C), 2079(A), 2080, 2081, 2083, 2087 and 2088, and enacted R.S. 30:2074(B)(8) and Chapter 32 of Title 40 of the Louisiana Revised Statutes of 1950, comprising R.S. 40:2821-2826, relative to state funds; creates the fund; provides for administration of the fund program by OPH, including the authority to establish assistance priorities and perform oversight and other related activities; authorizes the secretary of DEQ to administer the financial and environmental review aspects of the fund; requires that certain monies received be deposited into the fund; authorizes imposition of administrative fees; provides for rulemaking authority; provides for an exemption to certain public bond trust restrictions; and provides for related matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

### §7805. Definitions

The following terms used in these regulations shall have the following meanings:

*Applicant*—any person who submits an application for financial assistance in accordance with LAC 48:V.

*Community Water System*—a public water system that serves year-round residents within a residential setting.

*Construction*—preliminary planning, engineering, architectural, legal, fiscal, and economic investigations and/or studies, surveys, designs, plans, working drawings, specifications, erection, building, acquisition, alteration, remodeling, improvement, or extension of the project.

*Department*—the Office of Public Health (OPH) of the Louisiana Department of Health and Hospitals (DHH).

*Disadvantaged Community*—a community:

a. whose application for a construction loan is primarily to resolve a health and compliance problem;

b. that will serve a population of less than 3,300 on a retail connection basis;

c. that has or may have, after the project is completed, monthly user rates that exceed the state target rate; and

d. where the median household income is 80 percent or less of the state average. Larger communities may receive this designation if taking over another public water system which would be determined to be disadvantaged under these criteria or by providing drinking water service to existing unserved areas with health problems.

*Drinking Water Facilities*—facilities which are for the purpose of protecting, producing, collecting, transporting, and treating source water, and for storing, distributing, or holding drinking water.

*Environmental Review*—an assessment by the DEQ of the environmental impact of a proposed project and assurances that the project will comply with all environmental laws and executive orders applicable to the project area.

*Financial Assistance*—loans, credit enhancement devices, guarantees, pledges, interest rate swap agreements, linked deposit agreements, and other financial subsidies authorized by law.

*Fund*—the Drinking Water Revolving Loan Fund established by the department in accordance with the Safe Drinking Water Act (SDWA) Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature.

*Governmental Agency*—the state, its political subdivisions, or any agency thereof, Indian tribes, and combinations of governmental entities, which have authority to own, construct, or operate a public water system and other related activities.

*Letter of Intent*—a written notification of the intent of the applicant to participate in the fund program. The notification must include a request for financial assistance, the estimated amount of financial assistance, an estimated construction schedule; and must document the authority of the applicant to make the request.

*Loan or Loans*—a disbursement of money from the fund made by the department to a person in accordance with a loan and pledge agreement.

*Loan and Pledge Agreement*—a contractual arrangement by and between a person and the state acting by and through DEQ, providing for a loan or loans to such person for the purpose of paying the eligible cost of a project or projects.

*Noncommunity Water System*—a public water system that serves persons in a nonresidential setting.

*Nonprofit Noncommunity Water System*—a noncommunity water system that is owned by an entity organized under Louisiana law which qualifies as a tax exempt organization under the provisions of section 501(c)(3) of the Internal Revenue Code.

*Person*—any individual, partnership, firm, corporation, company, cooperative, association, society, trust, or any other business unit or entity, including the state, its political subdivisions, or agency thereof, Indian tribes, and combinations of governmental entities.

*Privately Owned System*—a public water system that is not owned by a governmental agency.

*Project*—improvements or activities that are to be undertaken by a public water system which:

a. are of a type that will facilitate compliance with state drinking water regulations which are no less stringent than any federal drinking water regulations adopted pursuant to the SDWA; or

b. further the health protection objectives of the SDWA.

*Public Water System*—a system intended to provide potable water to the public, which system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. The term includes:

a. any collection, treatment, storage, and distribution facilities under the control of the operator of the system and used primarily in connection with the system; and

b. any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

*Publicly Owned System*—a public water system that is owned by a governmental agency.

*Secretary*—the secretary of the Department of Health and Hospitals.

*State*—the State of Louisiana or any agency or instrumentality thereof.

*System Improvement Plan*—the document containing the necessary plans, specifications, and studies relating to the construction of a complete project of drinking water facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

#### **§7807. Pre-Application and Eligibility for Participation**

A. Pre-Application. To be considered for financial assistance, a completed pre-application must be submitted to the department by the applicant, using the form(s) provided by the department.

B. Letter of Intent. An applicant shall include a letter of intent to the department as part of the pre-application package.

C. Eligible Projects. Financial assistance may be provided only for the construction of drinking water facilities as described in a system improvement plan approved by the department. The department may consider only applications for projects by community water systems, both publicly and privately owned, and nonprofit noncommunity water systems.

D. Project Priority Rating. All eligible projects for which a pre-application is submitted will be assigned a priority rating annually by the department based upon the priority criteria described in the Intended Use Plan submitted to the EPA each year as part of the federal capitalization grant application.

E. Allowable/Eligible Costs

1. Allowable cost determinations, based on applicable federal law and guidance, will be made by the department on a project-by-project basis.

2. Pre-Application Conference. Applicants whose pre-application project falls in the fundable portion of the annual priority list, and who have demonstrated a commitment to proceed with the application process, shall be invited to an

application conference with the department and the DEQ in order to insure the applicant is acquainted with program requirements and to assist the applicant in preparing an application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

#### **§7809. Application Requirements and Loan Conditions**

A. Limitation on Applications. An application shall only be funded after authorization from both the department and the DEQ. Completed application packages shall be provided to both the department and the DEQ simultaneously.

B. Application Package. The contents of the application package must contain all applicable information required by the department including, but not limited to, the following:

1. System Improvement Plan. The applicant will submit a System Improvement Plan (SIP) consisting of those necessary plans, specifications and studies that directly relate to construction of drinking water facilities. The SIP must contain enough information to allow the department to perform an engineering review of the proposed project to determine compliance with the *State Sanitary Code*, and to allow for the appropriate environmental review as required by the DEQ.

2. Financial Information. The applicant is required to submit sufficient information to demonstrate its legal, institutional, managerial, and financial capability to ensure the construction, operation, and maintenance of the drinking water facilities and repayment of the loan, interest, and administrative fees.

3. Site Certificate. The applicant must submit a certificate executed by an attorney certifying that the applicant has acquired all property sites, easements, rights-of-way, or specific use permits necessary for construction, operation, and maintenance of the project described in the approved SIP.

4. Engineering Review. The department will perform a technical review of the SIP to insure that the proposed improvements are necessary and eligible for program funding, and that the completed project will result in compliance with the SDWA and any applicable state drinking water regulations. This review shall include the review of bidding documents to verify that the proposed contractor has complied with all applicable federal cross-cutting authorities and has or will have all required bonds and insurance certificates.

C. Loan Conditions. Loans for projects will be made only to eligible applicants who comply with the conditions and requirements established by the DEQ.

D. Loan Period. Standard loans shall be made by the DEQ for a period of time not to exceed 20 years from the completion date of the project. Loans to disadvantaged systems may be extended to a period of 30 years. Interim construction financing shall not exceed two years without written approval from the department and from DEQ.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

**§7811. Miscellaneous**

A. Coordination. Coordination of project review and approval for funding shall be conducted in accord with the Memorandum of Understanding (MOU) executed by the department and the DEQ.

B. Inspection During Construction. By making application for financial assistance to the department, applicants consent and agree to allow the department and/or the DEQ the right of reasonable access and opportunity for inspection as follows.

1. From the time a completed application for financial assistance is received by the department, throughout all stages of construction, and at any other time while financial assistance from the department to the applicant is outstanding, the department shall have the right to inspect any and all projects, and any and all incidental works, areas, facilities and premises otherwise pertaining to the project for which application is made.

2. The department and the DEQ shall further have the same right of inspection to examine any and all books, accounts, records, contracts, or other instruments, documents, or information in the possession of the applicant or its contractors, agents, employees, or representatives which relate in any respect to the receipt, deposit, or expenditure of project-related financial assistance funds.

C. Project Changes/Modifications

1. The applicant shall receive approval from the department and the DEQ prior to effecting any changes which:

- a. alter the project performance standards;
- b. alter the type or degree of water treatment provided by the project;
- c. substantially delay or accelerate the project schedule;
- d. substantially alter the design plans and/or specifications; or the location, size, or capacity; or quality of any major part of the project.

2. Minor changes in the project which are consistent with the scope and objectives of the project and the requested financial assistance do not require the approval of the department prior to implementation of the change. However, the amount of the financial assistance may be increased only by means of a formal amendment to the assistance agreement which must first be approved by both the department and the DEQ.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

A public hearing will be held on February 26, 1998 at the DEQ Maynard Ketcham Building, Room 326, 7290 Bluebonnet Road, Baton Rouge, LA, starting at 1:30 p.m. Interested parties are invited to attend and submit

oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Sarah Bradford at the address given below or at (504) 568-5100.

All interested persons are invited to submit written comments on the proposed regulations. Such comments must be received no later than March 6, 1998 at 4:30 p.m., and should be sent to Sarah Bradford, Environmental Health Services, DWRLF, Box 60630, New Orleans, LA 70160 or faxed to (504) 568-7703.

This proposed regulation is available for inspection at the following Office of Public Health offices: 325 Loyola Avenue, Room 403, New Orleans, LA 70112; 1772 Wooddale Boulevard, Baton Rouge, LA 70806; 206 East Third Street, Thibodaux, LA 70301; 825 Kaliste Saloom Road, Suite 100, Lafayette, LA 70508; 4240 Legion Street, Lake Charles, LA 70615; 1500 Lee Street, Alexandria, LA 71301; 1525 Fairfield Avenue, Room 566, Shreveport, LA 71101; 2913 Betin Street, Monroe, LA 71201; and 520 Old Spanish Trail, Slidell, LA 70458.

Bobby P. Jindal  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Drinking Water Revolving Fund**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It costs the State 20 percent (\$4,084,060) of the total federal allocation (\$20,420,300) which has been provided for under Act 319 of 1997 for the FFY 97 allocation. This match has been appropriated directly to DEQ.  
Implementation will also include a one-time publication cost of approximately \$660 as associated with publication in the *Louisiana Register*.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There should be no significant effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
This program provides financial assistance (e.g., loans at below market interest rates, etc.) to both publicly owned and privately owned community and nonprofit, noncommunity Public Water Systems (PWSs) for eligible projects which are designed to assist in achieving and maintaining compliance with state drinking water regulations which are no less stringent than any federal drinking water regulations or otherwise significantly further the health objectives of the SDWA.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This program will generate construction projects at the local level which may provide more opportunities for employment in the private sector at that level.

Bobby P. Jindal  
Secretary  
9801#075

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary**

Departmental Research (LAC 48:I.Chapter 25)

*(Editor's Note: A portion of the following notice of intent, published on pages 1766-1771 of the December 1997 Louisiana Register, is being republished to include text inadvertently omitted.)*

**Title 48  
PUBLIC HEALTH  
Part I. General**

**Chapter 25. Departmental Research  
§2509. Policies and Procedures**

A. - E.5. ...

F. Responsibilities of Research Investigators. In addition to all of the requirements detailed in §2509, researchers shall be responsible for the following.

1. - 6.d. ...

7. A final report of the research as well as copies of any publications based upon the research will be submitted to the IRB as soon as possible. The state owns the final report, but prior permission of the IRB for the investigator to publish results of the research is not required. The publication is the property of the researcher and/or the medium in which it is published. However, failure to provide the IRB with required periodic and final reports or publications based on the research shall negatively impact that researcher's future requests to conduct research in DHH operated/funded programs or facilities.

G. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with 56 FR 28002.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:

Bobby P. Jindal  
Secretary

9801#062

**NOTICE OF INTENT**

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

Facility Need Review—Determination  
of Bed Need (LAC 48:I.12503)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend the following rule for Facility Need Review as authorized by R.S. 40:2116 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Existing regulations providing for facility need review (LAC 48:I.12501-12505) were initially adopted on January 20, 1991, and were later repealed and repromulgated August 20, 1995 (*Louisiana Register*, Volume 21, Number 8).

A moratorium on additional Medicaid nursing facility beds has been imposed by R.S. 40:2116. This statute was amended by Act 1429 of 1997 to also require that Medicaid enrollment of approved but unbuilt nursing facilities be suspended for the length of the moratorium (e.g., July 1, 2001), unless construction began by June 30, 1998, and the beds are enrolled by December 31, 1999. Some proposed nursing facilities that received approval several years before the moratorium are still unbuilt and some owners may choose to begin construction by the deadline. These facilities must be constructed in specified service areas under current regulations. While there may be areas in the state more in need of nursing facility beds than these specified areas, the moratorium prevents these areas from adding beds. Therefore, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend the previously adopted regulations to allow certain unbuilt nursing facilities to relocate to higher areas of need.

**Title 48  
PUBLIC HEALTH—GENERAL  
Part I. General Administration  
Subpart 5. Health Planning**

**Chapter 125. Facility Need Review  
§12503. Determination of Bed Need**

A. - B.8. ...

9. In order for additional beds/facilities to be added in a service area, the bed-to-population ratio for nursing facility beds shall not exceed 65 Medicaid-approved beds per 1,000 elderly population in a service area, and average annual occupancy for the four most recent quarters (as reported in the LTC-2) shall exceed 95 percent in the service area. Exceptions are described below:

a. - b.xiii. ...

c. Exception for Relocation Into Another Service Area

i. An existing approval for construction of a nursing facility may be relocated from one service area to another service area if the following requirements are satisfied.

(a). The approval is currently valid under the provisions of §12501.E.1.

(b). The nursing facility for which the approval was granted was never constructed and the beds were never enrolled in the Medicaid program prior to the relocation.

(c). The average annual occupancy for the four most recent quarters in the service area to which the approval is to be relocated (as reported in the LTC-2) exceeds 95 percent.

(d). The service area from which the approval is to be relocated would not be left without any approved beds as a result of the relocation.

(e). The service area to which the approval is to be relocated does not have an approval for construction of a nursing facility which is currently valid under the provisions of §12501.E.1 and for which the beds have never been enrolled in the Medicaid program.

(f). Any approved beds not included in the relocation must be surrendered.

(g). Construction of a nursing facility for which the approval has been relocated pursuant to §12503.B.9.c must begin by June 30, 1998, and construction must be complete and the nursing facility certified and enrolled in the Medicaid program by December 31, 1999.

ii. An owner of an existing approval seeking to obtain a relocation of the approval pursuant to §12503.B.9.c must notify the Facility Need Review Program in writing of its intent to seek such a relocation. The notice of intent must state the number of approved beds to be included in the relocation and must include sufficient information to enable the program to determine whether the relocation would satisfy the requirements of §12503.B.9.c.i.

iii. After receiving the notice of intent from the owner, the program shall evaluate all relevant information to determine whether the relocation would satisfy the requirements of §12503.B.9.c.i and shall provide written notification to the owner stating whether the program has found that those requirements would be satisfied.

iv. Relocation of the existing approval cannot occur unless the owner receives written notification from the program stating that the relocation would satisfy the requirements of §12503.B.9.c.i.

v. Relocation of the existing approval shall be complete upon the program's issuance of the written notification described in §12503.B.9.c.iv. Thereafter, if the owner of the approval desires to have the approval relocated again to another service area (including the original service area for which the approval was granted), the procedure set forth in §12503.B.9.c.ii-iv must be utilized.

vi. If construction of the nursing facility has not begun by June 30, 1998, or if the facility has not been certified and enrolled in the Medicaid program by December 31, 1999, the relocation shall be null and void and the approval shall revert to the service area for which it was originally granted.

10. - 11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Management and Finance, LR 13:246 (April 1987), amended LR 13:659 (November 1987), repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, LR 14:440 (July 1988), amended LR 17:63 (January 1991), repealed and repromulgated LR 21:806 (August 1995), amended LR 24:

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding the proposed rule.

A public hearing on this proposed rule is scheduled for Friday, February 27, 1998 at 9:30 a.m. in the Department of Transportation and Development Auditorium, first floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline

for the receipt of all written comments is 4:30 p.m. on the day following the public hearing.

Bobby P. Jindal  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Facility Need Review—Determination of Bed  
Need**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The only estimated implementation cost anticipated will be the cost for promulgation of the proposed rule. This cost is estimated to be \$260.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Implementation of this rule will have no known effect upon revenue collections of either state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The proposed rule will shift the effect of building the nursing facilities between different areas of the state. It is estimated that utilization will increase as a result of relocation to areas of greater need.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will be a shift in the effects on competition and employment that new nursing facility construction will bring, both in terms of short term construction and long term facility staffing.

Thomas D. Collins  
Director  
9801#064

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

**Mental Health Rehabilitation Program  
Enrollment and Certification Criteria**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In collaboration with the Office of Mental Health (OMH), the Bureau of Health Services Financing revised the provisions governing the recipient eligibility, service delivery requirements, and reimbursement methodology for Mental

Health Rehabilitation Services under the Medicaid Program (*Louisiana Register*, Volume 22, Number 6). In further collaboration with OMH, the bureau has determined it is necessary to amend the provider participation requirements to establish enrollment and certification criteria which replace the requirement for licensure by the Department of Social Services. The provision of psychosocial skills training will continue to require an adult day care license in order to participate in the Mental Health Rehabilitation Program. This rule is being proposed to assure quality of care for Medicaid recipients receiving mental health rehabilitation services.

All current agencies must re-enroll under these requirements within 90 days of the effective date of the final rule.

#### **Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes enrollment and certification requirements for participation in the Mental Health Rehabilitation Program (MHR); which replaces the requirement for licensure in the appropriate category by the Department of Social Services (DSS).

Exception: The provision of psychosocial skills training, which will continue to require an adult day care license from DSS for participation in the Mental Health Rehabilitation Program. Currently enrolled providers must re-enroll and meet the revised criteria within 90 days of the effective date of the final rule.

#### **I. ...**

#### **II. Provider Participation**

A. Application Requirements. Currently enrolled and prospective providers of mental health rehabilitation services must apply to the Bureau of Health Services Financing or its designee for certification as a mental health rehabilitation provider. The enrolled provider must enroll separately in each region and have separate provider numbers in these regions where they do business. They have the ultimate responsibility for the delivery of all services, including those delivered through contractual agreement(s) in these regions. The prospective provider must provide documentation that the agency meets the following requirements and assurances to be enrolled as a Medicaid provider of MHR services:

1. completed PE 50 and addendum, and a completed disclosure of ownership form;
2. line of credit from a federally-insured, licensed, lending agency for at least \$20,000 as proof of adequate finances. Nonprofit agencies which have been in existence for at least five years and have a valid audit, by a certified public accountant, of their most recent fiscal year, which verifies the viability of the agency are not required to meet this standard;
3. statement identifying the population to be served: adults with serious mental illness; children with emotional/behavior disorder; or both; staff must have been credentialed by the Office of Mental Health to provide services to each designated population group (children and/or adults);
4. proof of general and professional liability insurance of at least \$150,000. The certificate holder shall be the Department of Health and Hospitals;
5. identification of the agency's main offices, all offices billing with the main office's Medicaid provider number, and all regions in which the agency conducts business;

6. résumés and documentation of qualifications for the current program director, the psychiatric director and all clinical manager(s), including documentation of licensure;

7. disclosure, in writing, of any financial transaction with the agency in which a member of the governing body, administrative personnel, or his/her immediate family is involved and/or a familial relationship with any other entity receiving Medicaid funds;

8. a copy of a current adult day care license issued by Department of Social Services if providing group psychosocial skills/training for adults;

9. certifications and licenses must reflect the correct agency name and address;

10. certification by Office of Mental Health that the provider meets the criteria listed in B below.

B. Certification Requirements. Upon receipt of the application, the Bureau of Health Services Financing or its designee will conduct an onsite visit within 30 working days of receipt of a completed enrollment packet to assure that the agency meets the following enrollment guidelines:

1. Demonstrate an administrative structure to provide mental health rehabilitation services as evidenced by written policies and procedures to include:

- a. the composition and responsibilities of the governing body;
- b. administrative files for employment and personnel including job descriptions, an organization chart, time sheets, payroll records and hiring practices;
- c. personnel records of each staff member documenting experience, education and training in accordance with MHR staffing and credential requirements;
- d. compliance with the ongoing MHR training requirements;
- e. procedure for the maintenance, security, and confidentiality of residents' records;
- f. consumers' rights including procedures for resolution of grievances;
- g. procedures for reporting cases of abuse and neglect as defined by state and federal regulations;
- h. procedures for subcontracting of services, including copies of leases, contracts and service agreements.

2. Demonstrate adequate financial resources; a system of business management and staffing; and fiscal accountability to assure maintenance of complete and accurate accounts, books and records in keeping with generally accepted accounting principles, as follows:

- a. maintain a preliminary or current detailed budget for the agency;
- b. maintain adequate funding for required staff and services;
- c. maintain a separate business bank account;
- d. submit a copy of an annual audit conducted by an independent certified public accountant, in accordance with generally accepted accounting principles, within 90 days of the close of the agency's first year of business and annually thereafter.

3. Demonstrate the capacity to provide all services within the MHR program directly or through a subcontract as evidenced by:

- a. identification of direct services to be provided, including a written program philosophy and agency goals;
- b. identification of the role of clinical management within the agency;
- c. identification of services to be provided by subcontractors;
- d. identification of professional consultants, including psychologists, psychiatrists, and/or physicians, and their role within the agency;
- e. maintenance of a written plan to determine the effectiveness of the MHR program including a Continuous Quality Improvement Plan and a consumer satisfaction component.

4. An agency shall be required to have regular posted business office hours and be fully operational at least eight hours a day, five days a week between 7 a.m. and 7 p.m. Services shall be available on an emergency basis 24 hours a day, seven days a week. (If an agreement is made with another entity, a signed agreement shall be on file.)

5. Outreach offices shall serve the same or part of the geographic area approved for the main office.

- a. The outreach office shall retain all clinical records for its consumers. Duplicate records need not be maintained at the main office, but shall be made available to federal/state surveyors during any review upon request. The main office shall maintain a listing of all clients and the outreach office seeing the client.

- b. Original personnel files are to be kept at the main office.

- c. A statement of personnel policies is maintained in each outreach office for staff usage.

- d. Approval for outreach offices will be issued, in writing, by the bureau or its designee for one year and will be renewed at time of recertification.

C. Failure to Meet Certification. If the agency fails to meet certification requirements, a letter identifying the problem areas will be sent to the agency. Within 60 days, the agency must request a second review to determine if all deficiencies were corrected. If the agency is unable to correct the deficiencies or does not request a second review, the agency is not allowed to request another site visit for one year after the initial request.

D. Recertification. Each year the agency must reapply to the BHSF or its designee for recertification 90 days prior to the expiration of the certification. The agency must submit all information outlined above. The agency will then be reviewed on-site by BHSF, or its designee, to assure the agency continues to meet certification requirements. If the agency meets the requirements, a one-year certification will be issued.

E. Failure to Meet Recertification. If the agency does not meet the standards, the agency will be notified of all deficiencies, in writing, within 15 working days following the on-site review. The agency shall submit a corrective action plan which shall be received by the bureau or its designee within 10 days of the date of the letter. A follow-up survey will be conducted (within 60 days of citation date) whenever necessary to assure correction of deficiencies. When applicable, deficiencies may be cleared at the exit interview and/or by mail.

#### F. Notification of Changes

1. The bureau or its designee shall be notified, in writing, of any of the following changes within five working days of the change:

- a. location;
- b. address;
- c. telephone number;
- d. hours of operation/24 hour contact procedure;
- e. ownership (controlling): 5 percent or more of controlling interest;
- f. administrator;
- g. program director, clinical manager, and psychiatric director;
- h. change in address or phone number of any out reach office;
- i. any subcontracting change that is in addition to; or deletion of subcontractors.

2. Any request for change in location of geographic area served must include written approval from BHSF, or its designee, for the proposed area.

3. Change of Ownership. If the agency expects to undergo a change of ownership, a representative of the buyer must obtain a packet entitled "Change of Ownership (CHOW) Packet" from the bureau and complete the following information before purchasing the agency:

- a. PE-50;
- b. a disclosure of ownership form;
- c. a certified copy of the bill of sale and articles of incorporation which must be submitted to the bureau within five working days after the act of sale;
- d. the new name and address of the agency;
- e. administrative personnel.

4. Closure of MHR Agency. If at any time the agency is no longer operational, the certification shall be deemed invalid and shall be returned to the bureau within five working days. The agency owner is responsible for notifying the bureau of the location of all records. To be operational, an agency must:

- a. have at least five active consumers at the time of any survey other than an initial survey;
- b. be able to accept referrals at any time;
- c. have adequate staff to meet the needs of current consumers;
- d. have required designated staff on the premises at all times during business hours;
- e. be immediately available by telecommunications 24 hours per day.

#### G. Suspension and/or Termination of Certification

1. The agency will be suspended from certification and enrollment for any of the following reasons:

- a. more than three complaints in a one-year period from consumers regarding service provision which have been validated by BHSF or its designee;
- b. continued noncompliance with any certification requirements (three surveys within one-year period);
- c. failure to provide services essential to the rehabilitation of a consumer;
- d. failure to uphold patient rights when violations may or could result in harm or injury;



e. failure of the agency to protect consumers from harmful actions of agency employees, including, but not limited to, health and safety, coercion, threat, intimidation, solicitation and harassment;

f. 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;

g. failure to maintain adequate qualified staff to provide necessary services;

h. failure of subcontractors to meet all required standards;

i. failure to allow entry to MHR agency or subcontracted agency; or access to any requested records during any survey;

j. failure to remain fully operational at any time for any reason other than a disaster;

k. failure of an agency to correct violations within 60 days after being cited, or at the time of the follow-up survey, whichever occurs first;

l. agency staff or owner knowingly, or with reason to know, making a false statement of a material fact in the:

i. application for enrollment;

ii. data forms;

iii. clinical record;

iv. matter under investigation by the department;

m. agency using false, fraudulent or misleading advertising;

n. convictions of a felony by an owner, administrator, or program director as shown by a certified copy of the record of the court of conviction of the above individual; or if the applicant is a firm or corporation, or any of its members or officers, or of the person designated to manage or supervise the agency; or

o. failure to comply with all reporting requirements in a timely manner.

2. The suspensive action will take effect immediately upon written notification. Suspended agencies will not be allowed to admit new clients until final decision when all appeal rights have been exhausted.

3. If an agency's suspension is upheld in an appeal, the agency and its owners (under any agency name) will not be allowed to participate for two years from the date of the suspension.

### III. - VIII. ...

### X. Notice and Appeal Procedure

An applicant or certificant aggrieved by any action taken by the department pursuant to Paragraph II(C), II(E), or II(G), may appeal such action suspensively by submitting a written request for an appeal to the secretary of the department. The request for appeal must be received by the secretary within 30 days after the receipt of the written notification of the department's action and must specify, in detail, the reasons for the appeal and the reasons why the applicant or certificant feels aggrieved by the department's action. The appeal and the hearing thereof shall be conducted in accordance with the Medicaid provider appeal process.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule is scheduled for Friday, February 27, 1998 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, 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.

Bobby P. Jindal

Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Mental Health Rehabilitation Program—Enrollment and Certification Criteria

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this proposed rule will result in state costs of \$386.50 for SFY 1998 for the state's administrative expense of promulgating this proposed rule as well as the final rule. No additional costs are anticipated for SFY 1999 and SFY 2000.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on federal revenue collections. However, the federal share of promulgating this proposed rule as well as the final rule is \$386.50.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no costs and/or economic benefits to directly affected persons or nongovernmental groups.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9801#069

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

### NOTICE OF INTENT

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

#### Psychiatric Services for Recipients Under Age 22

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Mental Health Rehabilitation Program was adopted as an optional service program covered under the Medicaid Program, effective July 1, 1989. A rule was adopted September 8, 1992, redefining services to reduce the disability resulting from mental illness and to restore the individual to his/her best possible functioning level in the community (*Louisiana Register*, Volume 18, Number 9).

The Bureau of Health Services Financing adopted a rule, effective November 1, 1994, establishing uniform medical eligibility criteria for admission to all inpatient hospital psychiatric services (*Louisiana Register*, Volume 20, Number 11). In a subsequent rule, December 2, 1994, pre-admission certification was added to ensure greater uniformity in the application of the admission criteria (*Louisiana Register*, Volume 20, Number 12).

This rule is being proposed for adoption due to the department noting a trend toward utilization of inpatient psychiatric services as opposed to outpatient "community-based" services particularly for participants under 22 years of age. The department has also noted the underutilization of community resources to support recipients of mental health services who have experienced hospital stays or are in need of intensive supports to avoid rehospitalization. To increase awareness of community-based services, the Office of Mental Health (OMH) and the Bureau of Health Services Financing (BHSF) have collaborated to develop an outreach program to evaluate the availability of community resources for the treatment of Medicaid recipients under the age of 22.

The bureau or its designee will assist treating physicians in identifying appropriate community resources based on level of need by conducting on-site visits to the hospitals to review the patients medical chart. In addition, a face-to-face interview will be conducted with patient, family and/or treating physicians.

This project will be initially implemented in Region 1 (New Orleans) and Region 7 (Shreveport area) and gradually phased in throughout the state.

The evaluation process is a supplement to and not a replacement of precertification.

This action is being taken to integrate the provision of inpatient and outpatient psychiatric services to enhance access to psychiatric services that are appropriate to meet the needs of recipients under the age of 22.

#### **Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule to provide an outreach program to enhance access to appropriate psychiatric services for Medicaid recipients under the age of 22. Admitting physicians will be required to contact the bureau or its designee to provide notification of a psychiatric hospital admission prior to the admission of children under 22. The bureau or its designee will follow the following procedure.

1. On-site visits will be made to review recipients' medical charts.

2. A face-to-face interview with recipient, family and/or treating physicians.

3. Level of need and the availability of community resources will be evaluated and findings shared with the treating physician and hospital treatment team.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule is scheduled for Friday, February 27, 1998 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, 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.

Bobby P. Jindal  
Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Psychiatric Services for Recipients Under Age 22**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Implementation of this proposed rule will result in state costs of \$120 for SFY 1998 for the state's administrative expense of promulgating this proposed rule as well as the final rule. No additional costs are anticipated for SFY 1999 and SFY 2000.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on federal revenue collections. However, the federal share of promulgating this proposed rule as well as the final rule is \$120.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no costs and/or economic benefits to directly affected persons or nongovernmental groups.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9801#070

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

#### **NOTICE OF INTENT**

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

Standards for Payment for Nursing  
Facilities (LAC 50:II.10147)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend the following rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq. and pursuant to

Title XIX of the Social Security Act. This proposed rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing currently reimburses nursing facilities for periods of temporary absence for residents. Reimbursement for periods of absence is available for hospitalization of an acute condition including psychiatric stays, which does not exceed five days per hospitalization; and for home leave, which is defined as a visit with relatives or friends, and which does not exceed nine days per calendar year. In addition, current regulations state that institutionalization is not broken if the absence does not exceed 14 days and if the facility has not discharged the resident (*Louisiana Register*, Volume 23, Number 8).

Act 1379 of the 1997 Regular Session of the Louisiana Legislature requires the Department of Health and Hospitals to promulgate rules and regulations which allow: 1) payment for up to seven leave of absence days per spell of illness, at a minimum, for each nursing home facility resident who is Medicaid eligible, when said resident has been admitted as an inpatient to another licensed health care facility; and 2) payment for up to 15 leave of absence days per year, at a minimum, for each nursing facility resident who is Medicaid eligible, when said resident leaves such nursing facility on home leave.

The department has determined that it is necessary to amend the current regulations for leave of absence for residents of nursing facilities by: 1) increasing the number of allowable leave of absence days for hospitalization of an acute condition from five days to seven days; 2) increasing the number of allowable leave of absence days for home leave from nine days to 15 days; and 3) increasing the continuity of stay requirement for eligibility (from 14 to 30) to allow for up to 30 days for temporary absence from a facility before continuity of stay is considered interrupted for individuals under the special income level.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part II. Medical Assistance Program**  
**Subpart 3. Standards for Payment**  
**Chapter 101. Standards for Payment for Nursing**  
**Facilities**  
**Subchapter F. Vendor Payments**  
**§10147. General Provisions**

A. - D.2. ...

a. hospitalization for an acute condition including psychiatric stays, which does not exceed seven days per hospitalization;

b. home leave.

Note: Payment cannot be made for hospital leave days while a resident is receiving swing bed SNF services.

D.3. - 4. ...

5. *Home Leave (Leave of Absence)* is defined as a visit with relatives or friends which does not exceed 15 days per calendar year. Institutionalization is not broken if the absence does not exceed 30 days and if the facility has not discharged the resident.

Note: Elopements (unauthorized absences under the plan of care) count against allowable home leave days. The period of absence shall be

determined by counting the first day of absence as the day the resident leaves the facility. Only a period of 24 continuous hours or more shall be considered an absence. Likewise, a temporary leave of absence for hospitalization or home visit is broken only if the resident returns to the facility for 24 hours or longer. Upon admission, a resident must remain in the facility at least 24 hours in order for the facility to submit a payment claim for a day of service or reserve a bed.

Example: A resident admitted to a nursing facility in the morning and transferred to the hospital that afternoon would not be eligible for any vendor payment for facility services.

6. If a resident transfers from one facility to another, the unused home leave days for that calendar year also transfer. No additional leave days are allocated.

7. The facility shall promptly notify the parish/regional BHSF Office of absences beyond the applicable 30 days for temporary absence, 15 days for home leave, or seven days for hospitalization limitations.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended LR 23: 970 (August 1997), LR 24:

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule is scheduled for Friday, February 27, 1998 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, 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.

Bobby P. Jindal  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT**  
**FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Standards for Payment for Nursing Facilities**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this proposed rule will result in increased expenditures of approximately \$849,769 for SFY 1998-99; \$877,123 for SFY 1999-2000; and \$903,436 for SFY 2000-2001. Included is \$200 in SFY 1998 for the state's administrative expense of promulgating this proposed rule as well as the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Estimated federal revenue collections are \$2,016,924 for SFY 1998-99; \$2,075,159 for SFY 1999-2000; and \$2,137,414 for SFY 2000-2001. Included in SFY 1998-99 is the federal share of \$200 for promulgating this proposed rule as well as the final.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Providers of nursing facility services will experience increased reimbursements of approximately \$2,866,693 for SFY 1998-99; \$2,952,282 for SFY 1999-2000; and \$3,040,850 for SFY 2000-

2001. The health and welfare of nursing facility residents will be protected by affording them increased opportunities to be with their families in order to maintain familial bonds, as well as assuring continued eligibility for these services when continuity of stay is interrupted for a period of less than 30 days. Included is \$400 in SFY 1997-98 for promulgating this proposed rule as well as the final rule.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9801#066

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

### NOTICE OF INTENT

#### Department of Insurance Office of the Commissioner

##### Regulation 63—Prohibitions on the Use of Medical Information and Genetic Test Results

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the commissioner of Insurance hereby gives notice of his intent to adopt Regulation 63. The regulation establishes the statutory prohibitions on the use of prenatal tests, genetic tests, and related genetic test information by health insurers, third party administrators, and insurance agents. The text of the proposed regulation (originally published in the October 1997 edition of the *Louisiana Register*) has been amended to incorporate recommendations made during the legislative oversight process for emergency rulemaking. The text of the House Committee on Insurance Report was published in the November 1997 edition of the *Louisiana Register*.

#### Proposed Rule

##### Section 1. Purpose

The purpose of this regulation is to establish the statutory prohibitions on the use of medical information including pregnancy tests, genetic tests and related genetic test information by health insurers, third-party administrators, and insurance agents.

##### Section 2. Authority

This regulation is issued pursuant to the authority vested in the commissioner of Insurance under the Administrative Procedure Act and R.S. 22:3, 22:10, 22:2014, 22:2002(7), 22:214(22) and (23), 22:213.6, and 22:213.7 of the *Insurance Code*.

##### Section 3. Definitions

*Collection*—obtaining a DNA sample or samples for the purpose of determining inherited or individual characteristics that can be utilized to predict the development of medical conditions in the future. *Collection* shall not mean diagnostic or medical treatment information about an existing medical condition or the prior medical condition of a person applying for or being covered by a health benefit plan.

*Compulsory Disclosure*—any disclosure of genetic information mandated or required by federal or state law in connection with a judicial, legislative, or administrative proceeding.

*DNA*—deoxyribonucleic acid including mitochondrial DNA, complementary DNA, as well as any DNA derived from ribonucleic acid (RNA). *DNA* shall not mean any medical procedure or test utilized in the practice of medicine for the purpose of diagnosing or treating a medical illness or health related condition.

*Disclose*—to convey or to provide access to genetic information to a person other than the individual.

*Family*—includes an individual's blood relatives and any legal relatives, including a spouse or adopted child, who may have a material interest in the genetic information of the individual. For purposes of providing individual or group health care coverage, the term *family* shall not be used to prevent the collection of reasonable medical information about individuals applying for health insurance coverage to perform medical underwriting based on existing or past medical conditions of those persons being insured, except *genetic information* as defined herein.

*Family History/Pedigree*—the medical history of blood relatives of an individual that is used to predict the possibility of developing a medical condition in the future. The term shall not include the medical history of an insured or applicant for coverage under a health benefit plan.

*Genetic Analysis*—the process of characterizing genetic information from a human tissue sample and does not include the performance of medical tests, including but not limited to blood tests, in the diagnosis or treatment of a medical condition.

*Genetic Characteristic*—any gene or chromosome, or alteration thereof, that is scientifically or medically believed to cause a disease, disorder, or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder or syndrome. The term shall not apply to identification or disclosure of an individual's gender for the purposes of obtaining or maintaining insurance or establishing insurance rates.

*Genetic Information*—all information about genes, gene products, inherited characteristics, or family history/pedigree that is expressed in common language. *Genetic information* does not include the medical history of an individual insured or applicant for health care coverage.

*Genetic Test*—any test for determining the presence or absence of genetic characteristics in an individual, including tests of nucleic acids, such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to diagnose or identify a genetic characteristic. The determination of a genetic characteristic shall not include any diagnosis of the presence of disease, disability, or other existing medical condition.

*Health Benefit Plan*—any health insurance policy, plan, or health maintenance organization subscriber agreement issued for delivery in this state under a valid certificate of authority and does not include life, disability income, or long-term care insurance.

*Individual*—the source of a human tissue sample from which a DNA sample is extracted or genetic information is characterized.

*Individual Identifier*—a name, address, social security number, health insurance identification number, or similar

information by which the identity of an individual can be determined with reasonable accuracy, either directly or by reference to other available information. Such term does not include characters, numbers, or codes assigned to an individual or a DNA sample that cannot singly be used to identify an individual.

*Insurer*—any hospital, health, or medical expense insurance policy, hospital or medical service contract, employee welfare benefit plan, health and accident insurance policy, or any other insurance contract of this type, including a group insurance plan, or any policy of group, family group, blanket, or franchise health and accident insurance, a self-insurance plan, health maintenance organization, and preferred provider organization, including insurance agents and third-party administrators, which delivers or issues for delivery in this state an insurance policy or plan. The term *insurer* does not include any individual or entity that does not hold a valid certificate of authority to issue, for delivery in this state, an insurance policy or plan. A certificate of authority to issue an insurance policy or plan for delivery shall not include a license or certificate to act as a preferred provider organization, insurance agent, or third-party administrator.

*Person*—all persons other than the individual or authorized agent acting on behalf of the individual, who is the source of a tissue sample and shall include a family, corporation, partnership, association, joint venture, government, governmental subdivision or agency, and any other legal or commercial entity. This shall not prevent any licensed insurance agent duly authorized to act on behalf of the individual, from completing and submitting health insurance application documents required to apply for coverage under a health policy or plan.

*Research*—scientific investigation that includes systematic development and testing of hypotheses for the purpose of increasing knowledge.

*Storage*—retention of a DNA sample or of genetic information for an extended period of time after the initial testing process. The term does not include medical history information about insureds or persons applying for coverage under a health benefit plan.

#### **Section 4. Applicability and Scope**

Except as otherwise specifically provided, the requirements of this regulation apply to all issuers of health care policies or contracts of insurance, or health maintenance organization subscriber agreements issued for delivery in the state of Louisiana. The requirements of this regulation shall not impinge upon the normal practice of medicine or reasonable medical evaluation of an individual's medical history for the purpose of providing or maintaining health insurance coverage. The requirements of this regulation address the use of medical information, including use of genetic tests, and genetic information for the purpose of issuing, renewing, or establishing premiums for health coverage. The provisions of this regulation do not apply to any actions of an insurer or third parties dealing with an insurer taken in the ordinary course of business in connection with the sale, issuance or administration of a life, disability income, or long-term care insurance policy.

#### **Section 5. Prohibitions on the Use of Pregnancy Test Results**

Any insurer shall be authorized to request medical information that verifies the pregnancy of an insured or individual applying for coverage under a health benefit plan. The results of any prenatal test, other than the determination of pregnancy, shall not be used as the basis to:

1. terminate, restrict, limit, or otherwise apply conditions to the coverage under the policy or plan, or restrict the sale of the policy or plan in force;
2. cancel or refuse to renew the coverage under the policy or plan in force;
3. deny coverage or exclude an individual or family member from coverage under the policy or plan in force;
4. impose a rider that excludes coverage for certain benefits or services under the policy or plan in force;
5. establish differentials in premium rates or cost sharing for coverage under the policy or plan in force;
6. otherwise discriminate against an insured individual or insured family member in the provision of insurance.

#### **Section 6. Requirements for Release of Genetic Test and Related Medical Information**

A. A general authorization for the release of medical records or medical information shall not be construed as an authorization for disclosure of genetic information. No insurer shall seek to obtain genetic information from an insured or applicant or from a DNA sample, without first obtaining written informed consent from the individual or authorized representative. To be valid, an authorization to disclose the results of a genetic test shall:

1. be in writing, signed by the individual and dated on the date of such signature;
2. identify the person permitted to make the disclosure;
3. describe the specific genetic information to be disclosed;
4. identify the person to whom the information is to be disclosed;
5. describe with specificity the purpose for which the disclosure is being made;
6. state the date upon which the authorization will expire, which in no event shall be more than 60 days after the date of the authorization;
7. include a statement that the authorization is subject to revocation at any time before the disclosure is actually made or the individual is made aware of the details of the genetic information;
8. include a statement that the authorization shall be invalid if used for any purpose other than the described purpose for which the disclosure is made.

B. A copy of the authorization shall be provided to the individual. An individual may revoke or amend the authorization in whole or in part, at any time. In complying with the provisions of this Section, the record holder is responsible for assuring only authorized information is released to insurers with respect to medical records that contain genetic information. The requirements of this Section shall not act to impede or otherwise impinge upon the ability

of the patient's attending physician to provide appropriate and medically necessary treatment or diagnosis of a medical condition.

### **Section 7. Prohibitions on the Use of Medical Information and Genetic Test Results**

A. No insurer shall require an applicant for coverage under a policy or plan, or an individual or family member who is presently covered under a policy or plan, to be the subject of a genetic test, release genetic test information, or to be subjected to questions relating to the medical conditions of persons not being insured under such policy or plan.

B. All insurers shall, in the application or enrollment information required to be provided by the insurer to each applicant concerning a policy or plan, include a written statement disclosing the rights of the applicant. Such statements shall be printed in 10-point type or greater with a heading in all capital letters that states: YOUR RIGHTS REGARDING THE RELEASE AND USE OF GENETIC INFORMATION. Disclosure statements must be approved by the Department of Insurance as complying with the requirements of R.S. 22:213.7 prior to utilization.

C. The results of any genetic test, including genetic test information, shall not be used as the basis to:

1. terminate, restrict, limit, or otherwise apply conditions to the coverage of an individual or family member under the policy or plan, or restrict the sale of the policy or plan to an individual or family member;
2. cancel or refuse to renew the coverage of an individual or family member under the policy or plan;
3. deny coverage or exclude an individual or family member from coverage under the policy or plan;
4. impose a rider that excludes coverage for certain benefits or services under the policy or plan;
5. establish differentials in premium rates or cost sharing for coverage under the policy or plan;
6. otherwise discriminate against an individual or family member in the provision of insurance.

### **Section 8. General Provisions**

A. The requirements of this Section shall not apply to the genetic information obtained:

1. by a state, parish, municipal, or federal law enforcement agency for the purposes of establishing the identity of a person in the course of a criminal investigation or prosecution;
  2. to determine paternity;
  3. to determine the identity of deceased individuals;
  4. for anonymous research where the identity of the subject will not be released because it is confidential;
  5. pursuant to newborn screening requirements established by state or federal law;
  6. as authorized by federal law for the identification of persons;
7. by the Department of Social Services or by a court having juvenile jurisdiction as set forth in *Children's Code*

Article 302 for the purposes of child protection investigations or neglect proceedings.

B. An applicant/insured's genetic information is the property of the applicant/insured. No person shall retain genetic information without first obtaining authorization from the applicant/insured or a duly authorized representative, unless retention is:

1. for the purposes of a criminal or death investigation or criminal or juvenile proceeding;
2. to determine paternity.

C. For purposes of R.S. 22:213.7, any person who acts without proper authorization to collect a DNA sample for analysis, or willfully discloses genetic information without obtaining permission from the individual or patient as required under this regulation, shall be liable to the individual for each such violation in an amount equal to:

1. any actual damages sustained as a result of the unauthorized collection, storage, analysis, or disclosure, or \$50,000, whichever is greater;
2. treble damages, in any case where such a violation resulted in profit or monetary gain;
3. the costs of the action together with reasonable attorney fees as determined by the court, in the case of a successful action to enforce any liability under R.S. 22:213.7.

D. Any person who, through a request, the use of persuasion, under threat, or under a promise of a reward, willfully induces another to collect, store or analyze a DNA sample in violation; or willfully collects, stores, or analyzes a DNA sample; or willfully discloses genetic information in violation of R.S. 22:213.7 shall be liable to the individual for each such violation in an amount equal to:

1. any actual damages sustained as a result of the collection, analysis, or disclosure, or \$100,000, whichever is greater;
2. the costs of the action together with reasonable attorney fees as determined by the court, in the case of a successful action under R.S. 22:213.7.

E. The discrimination against an insured in the issuance, payment of benefits, withholding of coverage, cancellation, or nonrenewal of a policy, contract, plan or program based upon the results of a genetic test, receipt of genetic information, or a prenatal test other than one used for the determination of pregnancy shall be treated as an unfair or deceptive act or practice in the business of insurance under R.S. 22:1214.

The proposed regulation is scheduled to become effective May 21, 1998. Interested parties may submit written comments on the proposed regulation until 4:30 p.m., February 27, 1998, to Richard O'Shee, Health Care Advisor, Box 94214, Baton Rouge, LA 70804-9214.

James H. "Jim" Brown  
Commissioner of Insurance

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Regulation 63—Prohibition on the Use of  
Medical Information and Genetic Test Results**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is not anticipated that the Department of Insurance will incur any costs or savings as a result of implementing this regulation. Any new duties imposed upon the department by this regulation would be handled by existing personnel.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Adoption of this proposed regulation will not have any effect on revenue collections by state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
It is not anticipated that the proposed regulation would have any economic impact upon insurers or insureds. The proposed regulation does not impose new duties or responsibilities upon insurance companies, third-party administrators, insurance agents, or insureds. No insurance company has ever required the use of genetic or prenatal testing in the issuance or cancellation of policies.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
It is not anticipated that this revision would have any effect on employment or competition.

Brenda St. Romain  
Assistant Commissioner  
Management and Finance  
9801#047

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of the Secretary**

Oyster Lease Damage Evaluation Board  
Proceedings (LAC 43:I.Chapters 37 and 39)

The Department of Natural Resources, Office of the Secretary hereby gives notice that it intends to adopt rules governing the administration of the Oyster Lease Damage Evaluation Board, in accordance with R.S. 56:700.10 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 43**

**NATURAL RESOURCES**

**Part I. Office of the Secretary**

**Subpart 3. Oyster Lease Damage Evaluation Board  
Proceedings**

**Chapter 37. General**

**§3701. Purpose**

These rules are adopted pursuant to R.S. 56:700.10 et seq. to provide for the filing and processing, and the fair and expeditious settlement, of claims pursuant to Part XV of Chapter 1 of Title 56 of the Louisiana Revised Statutes of 1950. These rules are designed to insure that the claims

procedure is as simple as possible, and these rules shall be interpreted in that spirit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:

**§3703. Definitions**

As used in LAC 43:I.Subpart 3, unless the context requires otherwise, the terms set forth below shall have the following meanings:

*Biological Survey*—a survey made to determine the biological test data, which is reported on a form prescribed by the board.

*Biological Test Data*—surveys of oyster beds and grounds by a certified biologist to determine the quality, condition and value of oyster beds and grounds.

*Board*—the Oyster Lease Damage Evaluation Board.

*Certified Biologist*—a biologist certified by the board as qualified to make biological surveys.

*Department*—the Department of Natural Resources.

*Final Biological Survey*—the biological survey made and filed by the owner or leaseholder, as applicable, pursuant to §3903.C.

*Initial Biological Survey*—the biological survey made and filed by the owner or leaseholder, as applicable, pursuant to §3903.A.

*Intervenor*—a party having an interest in the proceedings who is granted permission by the board to take part in the proceedings to the extent reasonable and necessary to assert or protect such party's interests.

*Leaseholder*—an owner of an oyster lease granted by the Department of Wildlife and Fisheries.

*Mineral Activity*—exploration (including all seismic operations) production, transportation (of equipment or product) and any other activity associated with the production of oil and gas. Also referred to as *Oil and Gas Activity*.

*Owner*—an owner or operator of a mineral activity.

*Part XV*—Part XV of Chapter 1 of Title 56 of the Louisiana Revised Statutes of 1950.

*Party*—leaseholder, owner or intervenor.

*Secretary*—the secretary of the Department of Natural Resources, or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

**Chapter 39. Damage Evaluation Process**

**§3901. Request for Arbitration**

A. Either an owner or a leaseholder who has been requested by an owner to enter into a settlement for damage to the leasehold which may occur due to the owner's proposed oil and gas activity that is expected to intrude upon the leasehold may file with the board a preliminary request for arbitration of the leaseholder's claim for damage in accordance with Part XV and LAC 43:I.Subpart 3.

B. The preliminary request shall contain the information required by a form prescribed by the board. A copy of the preliminary request and any annexed documents shall be served on the other party by the filing party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

**§3903. Biological Surveys**

A. The initial biological survey shall be based on onsite inspection and evaluation and shall be made to determine the quality and value of the beds and grounds expected to be affected by the proposed oil and gas activity.

B. If a preliminary request for arbitration is filed but the owner does not file the initial biological survey report within 60 days of service of the preliminary request for arbitration, the leaseholder may apply to the board for an order to have the initial biological survey made and filed by the owner.

C. Upon completion of the oil and gas activity proposed by the owner, the owner shall have a final biological survey made at the owner's expense and filed with the board together with a request for arbitration within 60 days of completion of the oil and gas activity, to furnish a basis for determination of the actual damage to the leasehold sustained as a result of the oil and gas activity.

D. If the leaseholder believes that the oil and gas activity proposed by the owner has been completed, and that the final biological survey has not been timely made and filed by the owner, the leaseholder may call for a hearing to determine whether the owner has complied with §3903.C hereof. If upon hearing the board finds that the owner has not so complied, the board shall permit the leaseholder to have a final biological survey made and filed together with a request for arbitration, and the reasonable cost of this survey shall be assessed against the owner as part of the actual damage sustained by the leasehold.

E. The board shall engage experts to assist the board in establishing a uniform evaluation method to be followed by certified biologists in determining the quality, condition and value of the oyster beds and grounds before the oil and gas activity takes place and in determining the estimated damage or loss to the leasehold after the activity is completed.

F. The uniform evaluation method adopted by the board shall be made available to all parties and all certified biologists for use in proceedings before the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

**§3905. Certification and Selection of Biologists**

A. Biologists having a minimum educational attainment of a degree in a biological science, or having been accepted by a federal or state court in Louisiana as an expert witness in the field of oyster biology or oyster ecology may apply to the board for certification. The application for certification shall be accompanied by a résumé of educational attainments and work experience, certified copies of transcripts, and any other information considered useful to the board in assessing the qualifications of the applicant as to competency in making biological surveys required by Part XV and LAC 43:I.Subpart 3. The board shall consider the application for certification and information submitted in support thereof and may in the exercise of the board's discretion certify the

applicant as a biologist qualified to make biological surveys required by LAC 43:I.Subpart 3.

B. The board shall annually review and maintain a list of certified biologists from which a selection must be made of a biologist to make any biological survey provided for by Part XV or LAC 43:I.Subpart 3.

C. The board may decertify the certified biologist, after a hearing, upon a finding of unsatisfactory performance.

D. When an owner is required to have a biological survey made under Part XV, he must choose one of a group of three certified biologists submitted by the board to the owner.

E. The selection of the group of three certified biologists to be submitted to the owner as provided above shall be made by the board from the list of all certified biologists, in the following manner.

1. The initial order of listing of the certified biologists shall be determined by drawing lots under the supervision of the board.

2. The initial group of three certified biologists shall be comprised of the top three individuals on the list.

3. The next group of three certified biologists shall be formed by striking the individual of the initial group chosen by the owner and adding the next individual listed below the initial group.

4. Succeeding groups shall be formed by proceeding down the list in like manner until there are less than three individuals left on the list, at which point a new list of all of the certified biologists shall be made and the order of listing redetermined by again drawing lots.

5. Selection of subsequent groups shall be made in the same manner as provided above for the initial list.

F. In the case of a biological survey made pursuant to §3903.D, the leaseholder may select a certified biologist in the same manner as an owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

**§3907. Estimated Damage Deposit**

A. Upon filing of the initial biological survey, the board shall determine the amount of the damage estimated to be sustained by the leasehold as a result of the proposed oil and gas activity, and shall notify the parties of the board's determination.

B. Upon a showing of urgent circumstances, the board will expedite to the extent practicable its determination of estimated damage.

C. Upon payment of a deposit with the board of the amount of the damage estimate made by the board, the owner may proceed with the proposed oil and gas activity. The deposit shall be invested with the state treasury as security for payment of any damage award and for payment of interest earned on the amount of the award.

D. If the deposit is not made within 30 days after notice of the board's estimated damage determination, the board may, in its discretion, dismiss the proceeding and order the owner to reimburse the leaseholder the amount of any filing fee paid by him.



E. The owner may, at any time prior to payment of the deposit, withdraw the owner's original request to the leaseholder to enter into a settlement, and proceedings hereunder shall thereupon terminate. Withdrawal shall be effective upon notice to the board and the leaseholder, and upon reimbursement by the owner to the leaseholder of any filing fee paid by him.

F. If, after the deposit is made, the owner does not commence the proposed activity within a reasonable time, the board may, upon hearing, award the leaseholder any filing fee paid by him and the reasonable cost of any survey that may have been separately undertaken by him, pay such award out of the deposit, and return the balance of the deposit to the owner, with interest earned on such balance, and dismiss the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

### **§3909. Hearings and Determination of Actual Damage**

A. Upon filing of the final biological survey together with a request for arbitration, the board shall call for a hearing to determine the actual damage sustained by the leasehold as a result of the oil and gas activity. The amount of actual damage determined by the board after hearing and review by the secretary shall be due by the owner to the board for the benefit of the leaseholder. If the damage award does not exceed the amount of the deposit made by the owner in accordance with §3907.B and D hereof, the board shall pay the amount of the award out of the deposit, together with interest earned thereon, to the leaseholder, and the balance, if any, shall be paid to the owner, together with interest earned on such balance. If the award exceeds the amount of the deposit the board shall pay the entire amount of the deposit, together with the interest earned thereon, to the leaseholder and shall order the owner to pay the leaseholder the amount of the difference between the award and the deposit together with legal interest thereon from the date of the initial deposit.

B. The determination of damage by the board and review by the secretary shall be based on the values shown in the biological surveys and shall reflect true and actual damage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

### **§3911. Conduct of Hearings**

A. The board shall give reasonable notice of all hearings to all parties.

B. The notice shall include:

1. a statement of the time, place, and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular sections of the statutes and rules involved;
4. a short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. At the hearing, all parties shall have the opportunity to respond and to present evidence on all issues of facts involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

D. The hearing record shall include:

1. all pleadings, motions, and intermediate rulings;
2. evidence received or considered or a résumé thereof if not transcribed;
3. a statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;
4. offers of proof, objections, and rulings thereon;
5. proposed findings and exceptions; and
6. any decision, opinion, or report by the board or the secretary.

E. The board shall, at the request of any party or person, have prepared and furnish him with a copy of the transcript or any part thereof upon payment of the cost thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

### **§3913. Discovery**

A. Parties may obtain discovery by written interrogatories, production of documents and things, requests for admission, and permission to enter upon land or other property for inspection and other purposes, limited in scope to the following matters:

1. the oil and gas activity conducted or to be conducted by the owner;
2. the quality and value of the oyster beds and grounds expected to be affected by the proposed oil and gas activity; and
3. the actual damage sustained as a result of the oil and gas activities.

B. The board in its discretion may allow discovery as to other matters, and in exceptional circumstances may allow discovery by deposition.

C. A party may serve upon any other party written interrogatories to be answered separately and fully under oath, unless objection upon stated grounds is made to an interrogatory. Interrogatories may be served with the preliminary request for arbitration or at any time after filing of the preliminary request, and shall be answered within 30 days after service.

D. Any party may serve on any other party a request to produce and permit the party making the request to inspect and copy any designated documents including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained or inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of permissible discovery and which are in the possession, custody, or control of the party upon whom the request is served; or permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of permissible discovery. The request may be served

with the preliminary request for arbitration or at any time after filing the preliminary request. The request to inspect and copy shall describe each item or category of items to be inspected with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 15 days after service of the request stating that inspection and related activities will be permitted as requested unless the request is objected to in whole or in part, on stated grounds.

E. A party may serve upon any other party a written request for the admission, for purposes of the pending arbitration proceeding only, of the truth of any matters within the scope of permissible discovery set forth in the request, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may be served with the preliminary request for arbitration or at any time after filing the preliminary request. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection upon stated grounds addressed to the matter. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admissions; and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. Any matter admitted is conclusively established unless withdrawn or amended prior to a hearing on the merits, or thereafter if not substantially prejudicial to the requesting party.

F. Discovery Proceedings. Discovery proceedings shall be conducted under the supervision of the board and any party may apply to the board for an order or other relief as justice may require. The board may, after hearing, impose upon any party who fails unreasonably to comply with discovery rules or with an order of the board the reasonable expenses, including attorney fees, incurred by the other party or parties as a result of such failure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

#### **§3915. Duration of Oil and Gas Activity by the Owner**

A proposed oil and gas activity shall be deemed completed when the last damaging event occurs during the course of the activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

#### **§3917. Limitations for Filing of Claims**

A. The leaseholder must file his preliminary request for arbitration within two months of the date of receipt from the owner of the owner's request to the leaseholder to enter into a settlement for the damage which may be sustained due to the owner's proposed oil and gas activity expected to intrude upon the leasehold.

B. The owner may file a preliminary request for arbitration at any time after the owner determines in good faith that a settlement between the owner and the leaseholder cannot be reached. However, if the owner, by implementing the proposed oil and gas activity, intrudes on the leasehold prior to payment of the required deposit in accordance with Part XV, initiation of proceedings under Part XV shall thereupon become barred, and if proceedings are pending, shall thereupon be dismissed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

#### **§3919. Notices, Filings, and Service of Copies**

All notices, filings and service of copies provided for herein shall be in writing and shall be effective upon physical delivery to the proper recipient or upon placing same in the U.S. mail, certified, with receipt requested, addressed to the proper recipient. Notices, filings and service of copies may also be transmitted by facsimile equipment and shall be effective upon transmittal, if followed by delivery or mailing of the original document within a reasonable time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

#### **§3921. Fees**

The filing fee of \$500 shall be paid to the board upon filing the preliminary request for arbitration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

#### **§3923. Judicial Review**

A. Any party who is aggrieved by the final decision or order in these proceedings is entitled to judicial review thereof.

B. Proceedings for judicial review of the final decision or order shall be instituted by filing a suit for judicial review in the district court of the parish in which the oyster lease is situated within 30 days of service of the notice of the final decision or order. Copies of the petition for judicial review shall be served upon the board and all parties to these proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 24:

Comments and views regarding these proposed rules should be directed in written form, to be received no later than 5 p.m., February 27, 1998 to Jack C. Caldwell, Secretary, Department of Natural Resources, Box 94396, Baton Rouge, LA 70804-4396.

Jack C. Caldwell  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Oyster Lease Damage Evaluation  
Board Proceedings**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Implementation cost to the state for the first year, January 1 through June 30, 1998, is estimated at \$43,100. The cost in fiscal year 1998/99 is estimated to be \$85,500 and in 1999/2000 is estimated to be \$85,500. However, there will be no implementation cost or savings to local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
- |                                     |                 |          |                 |
|-------------------------------------|-----------------|----------|-----------------|
| §3901. Applications for Arbitration | 75 @ \$500 each | \$37,500 |                 |
| Certifications                      | 8 @ \$200 each  | 1,600    |                 |
| §3921. Applications                 | 8 @ \$500 each  | 4,000    |                 |
|                                     | TOTAL           |          | <u>\$43,100</u> |
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Estimated additional cost to producers of oil and gas/leaseholder/biologists/oyster fisheries
- |                             |          |
|-----------------------------|----------|
| Fees assessed in FY 97-98   | \$43,100 |
| Fees assessed in FY 98-99   | \$85,500 |
| Fees assessed in FY 99-2000 | \$85,500 |
- There could be some savings in damage payments by oil and gas producers.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will be no effect on competition. There may be increased employment of biologists in the private sector to perform biological surveys.

Jack C. Caldwell  
Secretary  
9801#058

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of the State Fire Marshal**

Manufactured Housing (Installation)  
(LAC 55:V.521-553)

In accordance with the provisions of R.S. 49:950 et seq., and R.S. 51:911.32.A(2), relative to the authority of the Office of the State Fire Marshal to promulgate and enforce rules and regulations, notice is hereby given that the Office of the State Fire Marshal intends to adopt the following rules.

**Title 55**

**PUBLIC SAFETY**

**Part V. Fire Protection**

**Chapter 5. Manufactured Housing (Installation)**

**§521. Definitions**

When used in these regulations, these terms shall have the following meanings:

*Dealer*—any person engaged in the sale, leasing, or distribution of mobile homes or manufactured housing primarily to a person who, in good faith, purchases or leases a mobile home or manufactured housing for purposes other than resale.

*Fire Marshal*—the assistant secretary of the Office of the State Fire Marshal of the State of Louisiana.

*Installation*—the construction of a foundation system and the placement or erection of a manufactured home or a mobile home on the foundation system. *Installation* includes, without limitation, supporting, blocking, leveling, securing, or anchoring such home and connecting multiple or expandable sections of such home together and to the foundation.

*Installer*—a person responsible for the installation of a manufactured home or mobile home and who is required to obtain a license pursuant to the provisions of R.S. 51:912.

*Manufactured Home*—a new or used structure transportable in one or more sections, which is 8 body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating and air conditioning, and electrical systems contained therein. For purposes of LAC 55:V.Chapter 5, the terms *mobile home*, *manufactured home*, and *manufactured housing* may be used interchangeably and apply only to structures bearing the permanently affixed seal of the U.S. Department of Housing and Urban Development.

*Manufacturer*—any person who constructs or assembles manufactured housing.

*Person*—a natural person, association, or group of natural persons, partnership, company, corporation, institution, or legal entity.

*Salesman*—any person employed by a dealer for purposes of selling manufactured housing to the public.

*Transporter*—an individual who transports the manufactured home or mobile home to the site of installation but does not perform the blocking and anchoring of the home.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

**§523. General**

A. Any person who engages in the business of installing manufactured homes, who directs, supervises, or controls installations or performs repairs to an existing installation shall have an appropriate, valid Louisiana manufactured housing installer's license issued by the Office of the State Fire Marshal.

B. Persons who have had a license issued by this office revoked may not apply for approval as an installer within one year of the date of revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

### §525. License Exceptions

Notwithstanding the provisions of LAC 55:V.523, the following individuals are not required to have a license as provided therein:

1. when the individual installing the manufactured home is the owner thereof, or the manufactured home is owned by a member of the individual's immediate family, and the manufactured home is not intended for sale, exchange, lease, or rent;

2. an individual installing additional blocking for support;

3. an individual installing a manufactured home when the manufactured home is installed on a dealer's, distributor's, or manufacturer's sales or storage lot or at a show and is not occupied or intended to be occupied. This exemption does not include those manufactured homes installed in manufactured homes parks or manufactured homes subdivisions;

4. an individual performing plumbing or electrical work when the individual doing the work is a licensed plumber or electrician;

5. an individual performing maintenance, repairs, or corrections to an installation for the purpose of customer service on behalf of manufacturers or dealers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

### §527. Manufactured Housing Installer's License

Effective May 1, 1998, a manufactured home may not be installed without a licensed manufactured housing installer supervising installation work being performed. The licensed manufactured housing installer is responsible for the reading, understanding, and following of the manufacturers installation instructions and performance of nonlicensed workers engaged in the installation of the home.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

### §529. Requirements for Installer's License

A. To be licensed as a manufactured housing installer, an applicant shall have at least one year's experience installing manufactured homes.

B. Verification of experience shall be submitted in the form of sworn statements signed by the applicant before a notary public.

C. In addition to the completed application form and application fee, an applicant shall provide the following:

1. personal identification;
2. proof of workers' compensation insurance;
3. proof of vehicle liability as required by law.

D. After January 1, 1999, in addition to the requirement of §529.A, B, and C, the application must include a certificate of

completion as evidence of having attended and received a passing grade in a fire marshal-approved manufactured housing installation education program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

### §531. Installer's Responsibilities and Limits

A. Work covered by an installer's license shall be limited to:

1. installing manufactured homes in accordance with applicable statutes, administrative rules and regulations, adopted codes, and standards;

2. installing the support, tie down and the structural connections for manufactured housing in accordance with applicable statutes, rules and regulations, adopted codes, and standards;

3. providing plumbing, electrical, and mechanical connections of and to the manufactured home in accordance with applicable statutes, rules and regulations, adopted codes, and standards;

4. performing plumbing, mechanical, and electrical tests in accordance with applicable statutes, rules and regulations, adopted codes, and standards, as required for installation;

5. supervising individuals installing manufactured homes.

B. An installer shall:

1. assure the manufactured home is in compliance with the *Louisiana Uniform Standard Code for Manufactured Housing and Mobile Homes*;

2. perform electrical and plumbing tests if the plumbing and electrical connections were made by the installer;

3. close and secure all access panels and covers on or under the manufactured home;

4. assure the manufactured home installation is in compliance with the applicable statutes, rules and regulations, adopted codes, and standards;

5. assure that all doors and windows are adjusted, secured in place, and operational;

6. assure that all "ship loose" flue vents and chimneys are installed, secured in place, and capped according to their listing;

7. complete all reporting and application forms required by these rules;

8. leave the manufacturer's installation instructions at the installation site to be available at the time of the inspection if used for any part of the installation and thereafter left with the owner thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

### §533. Installer's Responsibilities to the Consumer

An installer shall:

1. ensure all phases of the installation work performed by the installer are complete and in compliance with the applicable statutes, rules and regulations, adopted codes, and standards;

2. notify the Office of the State Fire Marshal of the installation work performed by the installer;

3. correct all applicable nonconformances within 30 days of receipt of a correction notice from the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

**§535. Monthly Report**

A. An installer shall submit a monthly installation report to the Office of the State Fire Marshal by the twentieth day of the following month.

B. A report need not be filed for those months in which no installations were made.

C. Reports shall be submitted on forms provided by the Office of the State Fire Marshal and provide all information requested thereon.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

**§537. Issuance and Possession of License**

A. A manufactured home installer license shall be issued to the person named on the application and shall be nontransferable.

B. The licensee shall publicly display said license at licensee's principal place of business and physically possess a copy of the license when at the job site.

C. The licensee shall provide satisfactory evidence of being licensed when requested to by the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

**§539. License Renewal**

A. Licenses issued under LAC 55:V.Chapter 5 shall expire on January 1 of the year following issuance.

B. An application for renewal of a current license shall include:

- 1. the required fees as set forth in R.S. 51:912.27.A;
- 2. all information requested on the form by the Office of the State Fire Marshal.

C. Forty-five days prior to license expiration, the fire marshal shall mail each licensee a license renewal application.

D. A license renewal application must be submitted to the fire marshal prior to the expiration date of the license. Persons wishing to apply for a license after their license has expired must reapply for a new license and meet all requirements of a new applicant.

E. A person not meeting the continuing educational requirement prior to December 31 of each year, shall apply for a temporary installer's license that will be effective for six months or until said installer completes his continuing education requirement, whichever occurs first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

**§541. Issuance of the Temporary Installer's License**

A. In order to be issued a temporary installer's license, the applicant must qualify as provided by LAC 55:V:539.E, or meets all of the conditions of LAC 55:V:537 except for the educational requirements. The purpose of the temporary license is to allow such individuals to complete the educational requirements. Such requirements must be completed at the earliest available time after issuance of the temporary license. The temporary installer's license is not renewable.

B. A temporary installer's license allows persons to perform all of the work performed by an installer. The license shall be valid for six months from the date of issue.

C. The fee for the temporary license is the same as the installer's license as provided in R.S. 51:912.27.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32. A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

**§543. License Suspension or Revocation; Imposition of Civil Penalties**

A. The fire marshal may, after notice and hearing as required by R.S. 49:950 et seq., suspend or revoke an installer's license issued by this office, or impose a civil penalty as provided for by R.S. 40:1563.4, for violations of applicable statutes, rules, regulations, adopted codes, or standards or lawful orders issued by the fire marshal.

B. The schedule of fines shall be as follows:

1. First offense of the following violations:

- a. Failure to timely renew license \$100
- b. Failure to timely file required report \$100
- c. Failure to properly supervise unlicensed employees \$100
- d. Failure to install "ship loose" flue vents and chimneys \$100
- e. Failure to timely correct nonconformances \$100

2. Second offenses of the foregoing violations \$250

3. Third offenses of the foregoing violations \$500

4. First offense of the following violations:

- a. Failure to properly setup and install the manufactured home \$250
- b. Failure to properly tie down the manufactured home \$250
- c. Failure to properly plumb and/or electrically connect the manufactured home \$250
- d. Failure to properly tag and seal multi-sectional manufactured home \$250
- e. Bringing the manufactured home out of compliance with federal standards by altering it or installing improper equipment \$250
- f. Second offenses of the foregoing violations \$500
- g. Third offenses of the foregoing violations \$750

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

**§545. Education: Requirements, Installer's License**

A. Beginning January 1, 1999, all licensed installers shall attend at least one fire marshal-approved installation class per calendar year.

B. Classes shall only be provided by the fire marshal or a fire marshal-approved provider and shall include instruction as to statutes, codes, rules, and regulations or standards and/or changes thereof and proper installation procedures.

C. Prior to the end of the license period, licensees will be notified by the fire marshal of class requirements and class availability for the next license period.

D. The fire marshal shall not renew licenses of licensees who did not attend required classes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

**§547. Course Curriculum Requirements for Education Provider Training**

A. The course curriculum shall be submitted to the fire marshal for approval and shall include a detailed description of course content and materials.

B. The course curriculum for manufactured housing installers should, at a minimum, include the following areas of training:

1. definitions, as provided in the "Louisiana Minimum Standards for Installation of Manufactured Homes and Mobile Home" law;
2. license and registration requirements;
3. permits and penalties;
4. installer qualification;
5. location of manufactured homes;
6. foundation systems;
7. structural connections;
8. anchoring systems;
9. electrical connections;
10. plumbing connections;
11. mechanical connections;
12. fuel gas piping connections;
13. fire protection and separation;
14. underfloor enclosures, access, and ventilation;
15. alternate manufactured housing uses;
16. accessory buildings and structures;
17. alterations, repairs, and additions.

C. Within 30 days of notification of any change in course curriculum requirements adopted by the fire marshal, the provider shall submit a revised curriculum to the fire marshal for approval.

D. The provider shall notify the fire marshal, in writing, seven days prior to each class, indicating the time, date, and location of the class. The fire marshal's representative shall be permitted to audit any class, without fee or cost for entry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

**§549. Requirements for Education Provider Instructors**

A. Instructors must provide to the fire marshal for approval, documentation of qualifications to teach installation classes.

B. Documentation must include:

1. formal schooling;
2. specified training in the manufactured housing industry;
3. history of instructional ability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

**§551. Inspections by the Office of the State Fire Marshal**

A. Upon request for inspection by a Louisiana-licensed dealer, manufacturer, installer, or the homeowner, the Office of the State Fire Marshal will cause an inspection to be performed by one of the employees of this office to determine compliance with the applicable sections of R.S. 51:912.21 through R.S. 912.28 regarding installation.

B. Upon completion of the requested inspection the Office of the State Fire Marshall will present to the requesting party and the homeowner an inspection report indicating the findings of said inspection.

C. The requesting party will reimburse the Office of the State Fire Marshall for the inspection in accordance with the provisions of R.S. 51:911.32(3).

D. The fee shall be \$40.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

**§553. Pier Spacing and Construction**

In accordance with R.S. 51:912.23(1)(a) the following table and figures shall be utilized for installation of piers:

**TABLE A**

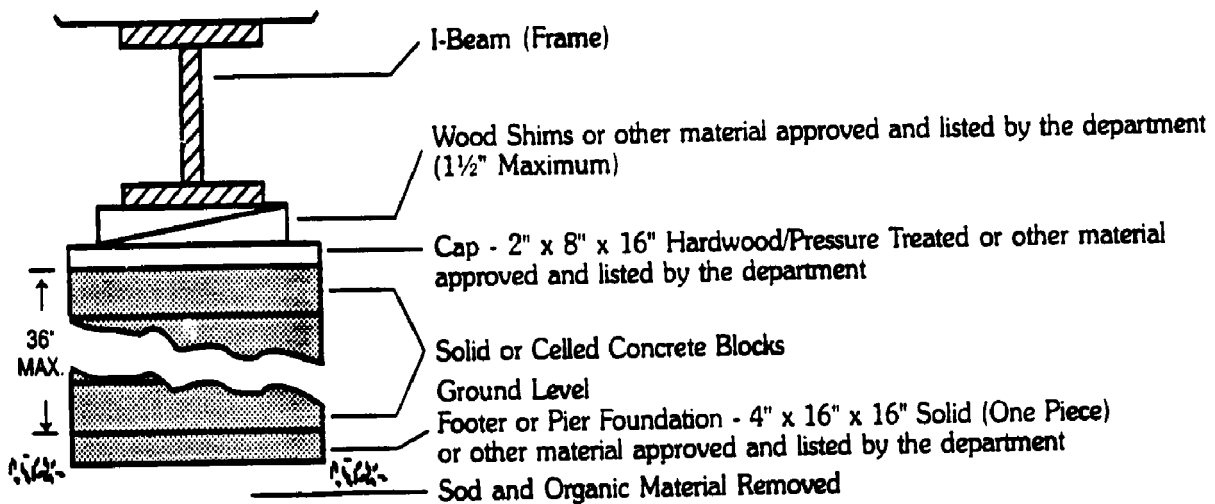
**PIER SPACING TABLE**

Soil Class	1,000 PSF		1,500 PSF		2,000 PSF		2,500 PSF		3,000 PSF	
Footer Size	4'x16'x16'	6'x20'x20'	4'x16'x16'	6'x20'x20'	4'x16'x16'	6'x20'x20'	4'x16'x16'	6'x20'x20'	4'x16'x16'	6'x20'x20'
Max. Pier Space	3'	4'6"	4'	6'6"	6'	9'	8'	11'	9'	11'

(Note: Pier Measurements are from Center to Center)

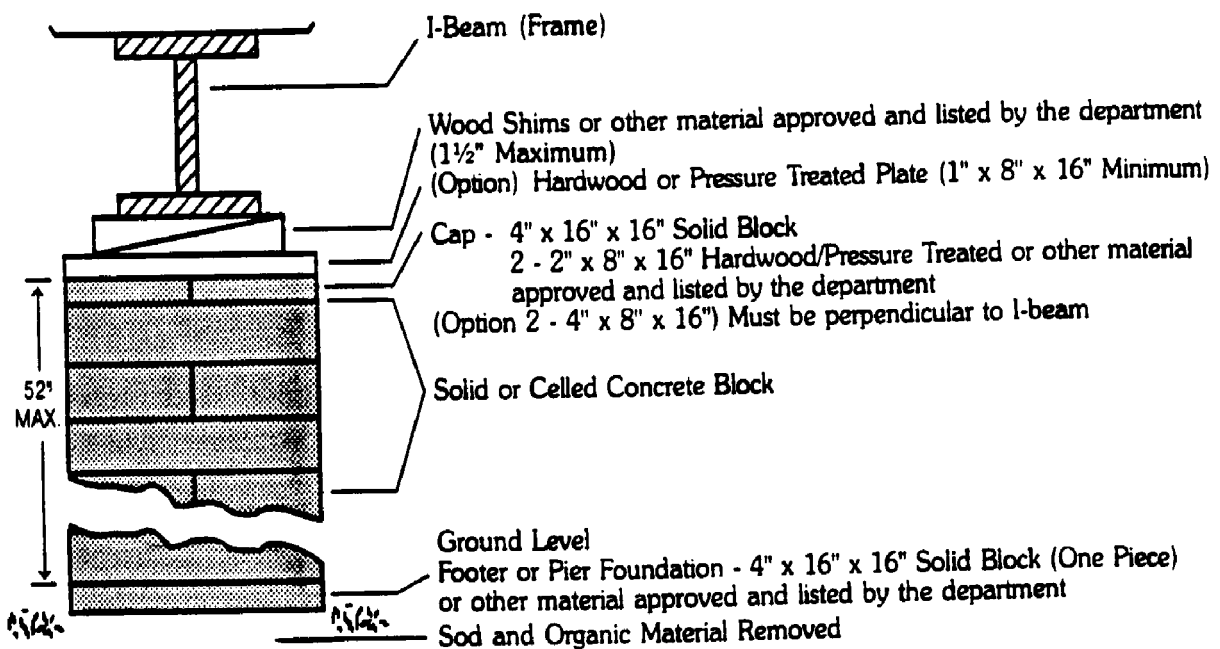
**FIGURE A**

**BLOCKING (Single Tiered)**



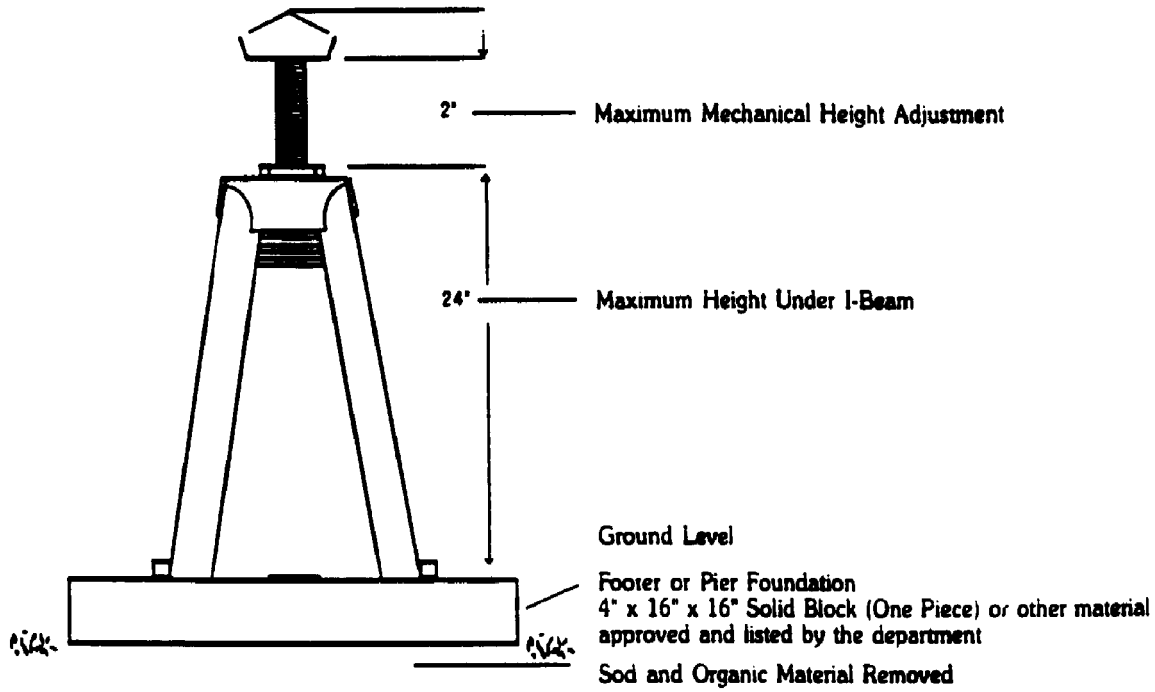
**FIGURE B**

**BLOCKING (Double Tiered and Block Interlocked)**



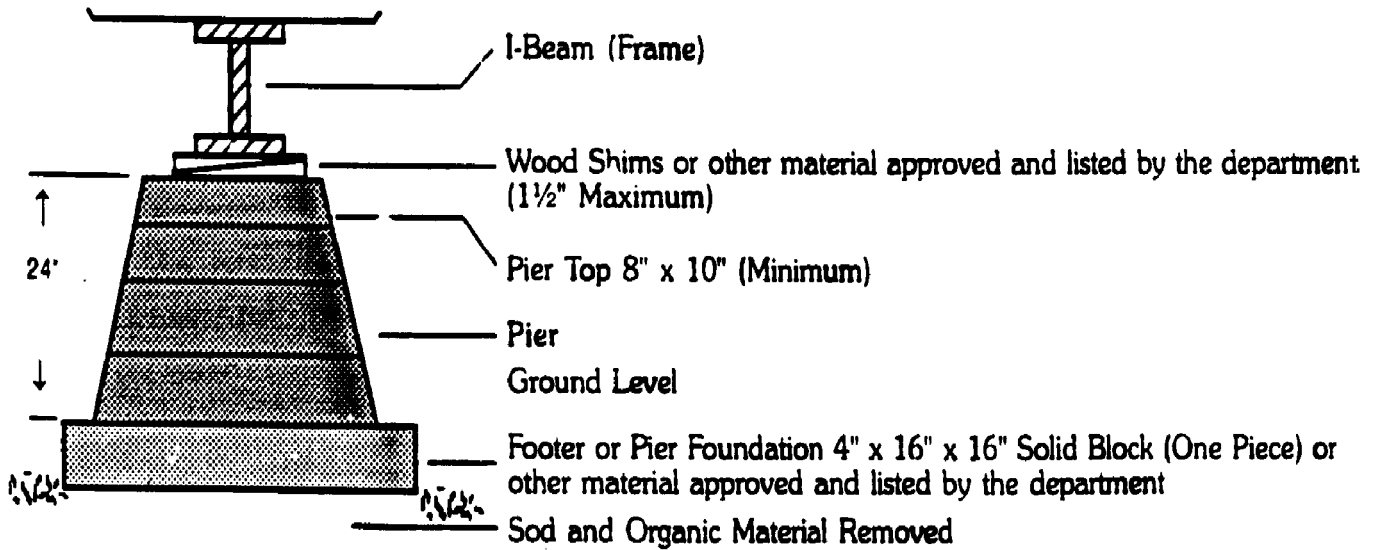
**FIGURE C**

**I-BEAM FRAME ATTACHMENT**



**FIGURE D**

**BLOCKING (Solid Pier)**





AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:

Interested persons may submit written comments on these proposed rules to Mike Cammarosano, 5150 Florida Boulevard, Baton Rouge, LA 70806. Comments will be accepted through close of business February 20, 1998.

Thomas H. Normile  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Manufactured Housing (Installation)**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no anticipated implementation costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Each of the 150 companies who will be licensed under R.S. 51:912.27.A and covered under this rule will pay the \$100 licensing fee. In addition, the rule sets educational requirements, reporting requirements, and course curriculum for installers.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will be no effect as fees are covered in R.S. 51:912.21 and R.S. 51:911.32.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The rule will ensure that competent persons are installing and tying down homes to meet manufacturer's setups. This will increase competition in the industry by educating employees in proper methodologies.

Thomas H. Normile  
Undersecretary  
9801#038

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Responsible Vendor Program  
Fees (LAC 55:VII.501)**

Under the authority of R.S. 26:906 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control proposes to adopt LAC 55:VII.501 to establish an annual \$35 fee for each licensed establishment holding a Class "A" General, Class "A" Restaurant, or a Class "B" Retail Alcoholic Beverage Control Permit issued under R.S. 26:71 or R.S. 26:271.

Act 1054 of the 1997 Regular Session of the Louisiana Legislature enacted Chapter 7 of Title 26 of the Revised Statutes, comprised of §§901 through 909, to establish the

Responsible Vendor Program. According to the Act's provisions, the program, which educates vendors, their employees, and customers about selling, serving, and consuming alcoholic beverages in a responsible manner, must be approved by January 1, 1998. Section 906 provides for a fee, not exceed \$50 per licensed establishment, to fund the costs of developing and administering the program.

**Title 55**

**PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control**

**Chapter 5. Responsible Vendor Program**

**§501. Fees**

The Office of Alcohol and Tobacco Control hereby establishes an annual fee of \$35 per licensed establishment holding a Class "A" General, Class "A" Restaurant, or a Class "B" Retail Alcoholic Beverage Control Permit issued under R.S. 26:71 or R.S. 26:271 for the purpose of funding development and administration of the Louisiana Responsible Vendor Program.

1. The fee shall be assessed on all new and renewal applications for retail permits to engage in the business of dealing in alcoholic beverages.

2. The fee shall not be assessed to those parties seeking a Special Event Permit under the provisions of R.S. 26:793(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:906.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:

Interested persons may submit data, views, or arguments, in writing to Murphy J. Painter, Commissioner, Office of Alcohol and Tobacco Control, Department of Revenue, Box 66404, Baton Rouge, LA 70896 or by FAX (504) 925-3975. All comments must be submitted by 4:30 p.m., Thursday, February 26, 1998.

A public hearing will be held on Friday, February 27, 1998, at 1 p.m. in the seventh floor conference room, 1885 Wooddale Boulevard, Baton Rouge, LA.

Murphy J. Painter  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Responsible Vendor Program Fees**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Adoption of this proposed rule will provide funding for the Office of Alcohol and Tobacco Control to implement the Responsible Vendor Program, which is expected to cost \$450,000 annually. The \$35 annual fee will be paid by the 13,000 licensed establishments holding Class "A" General, Class "A" Restaurant, or Class "B" Retail Alcoholic Beverage Control Permits issued under R.S. 26:71 or R.S. 26:271.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
If this proposed rule is adopted, the Office of Alcohol and Tobacco Control will collect additional self-generated funds of \$450,000 annually. The \$35 annual fee would be collected from

the 13,000 retail establishments holding Class "A" General, Class "A" Restaurant, or Class "B" Retail Alcoholic Beverage Control Permits issued under R.S. 26:71 or R.S. 26:271.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Adoption of this proposed rule will require the 13,000 licensed establishments holding Class "A" General, Class "A" Restaurant, or Class "B" Retail Alcoholic Beverage Control Permits issued under R.S. 26:71 or R.S. 26:271 to pay a \$35 annual fee as authorized by R.S. 26:906.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Adoption of this proposed rule should have no impact on competition or employment.

Murphy J. Painter  
Commissioner  
9801#020

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of Community Services**

Interethnic Adoption (LAC 67:V.401)

The Department of Social Services, Office of Community Services proposes to amend the following rule in the Adoption and Foster Care Program. This proposed rule, §401, Interethnic Adoption Provisions, replaces the previous §401, Multi-ethnic Placement. The final rule will be published in the April 1998 issue of the *Louisiana Register*.

This proposed rule is mandated by The Small Job Protection Act of 1996 (Public Law 104-188), Section 1808 "Removal of Barriers to Interethnic Adoption," which was signed by President Clinton on August 20, 1996. It became effective January 1, 1997. This proposed rule further affirms and strengthens the 1994 Multi-ethnic Placement Act prohibition against discrimination in adoption and foster care placements.

**Title 67**

**SOCIAL SERVICES**

**Part V. Community Services**

**Subpart 1. General Administration**

**Chapter 4. Placements**

**§401. Interethnic Adoption Provisions**

A. The Office of Community Services and its subrecipients involved in adoption or foster care placements may not:

1. deny to any person the opportunity to become an adoptive or a foster parent on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved; or

2. delay or deny the placement of a child for adoption or into foster care on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved.

B. The term *placement decision* means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of OCS and its subrecipients to seek the termination of birth parents'

rights or otherwise make a child legally available for adoptive placement.

C. Any individual who is aggrieved by an action in violation of §401.A taken by OCS or its subrecipients shall have the right to bring an action seeking relief in a United States district court of appropriate jurisdiction.

D. Nothing in §401 shall be construed to affect the application of the Indian Child Welfare Act of 1978, 25 U.S.C. 1901 et seq.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-188, Section 1808.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 20:898 (August 1994), amended LR 21:1353 (December 1995), LR 24:

Interested persons may submit written comments within 20 days of publication of this notice to Shirley B. Goodwin, Assistant Secretary, Box 3318, Baton Rouge, LA 70821. She is responsible for responding to inquiries.

Madlyn B. Bagneris  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Interethnic Adoption**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no savings. The only cost in FY 97-98 is \$500 for printing policy.

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 not be any costs nor economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Shirley B. Goodwin  
Assistant Secretary  
9801#059

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Support Enforcement—Child Support  
Distribution (LAC 67:III.2514)

The Department of Social Services, Office of Family Support proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subpart 4, Support Enforcement Services (SES), the child support enforcement program. An

emergency rule was signed by the secretary on December 3, 1997.

Public Law 105-33, the Balanced Budget Act of 1997, signed into law on August 5, 1997, amended §457 of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which governs the distribution of support collected under Title IV-D of the Social Security Act. The Department of Health and Human Services, Administration for Children and Families issued Action Transmittal OCSE-AT-97-17 on October 21, 1997, directing states to take immediate action. Under the existing rule, funds collected in excess of a Family Independence Temporary Assistance Program (FITAP) grant amount, up to the amount of the court-ordered monthly support, are disbursed to the applicant/recipient. These funds must now be retained for reimbursement of the recipient's FITAP payments.

Additionally, Public Law 104-193, as clarified by the Action Transmittal, mandated that state tax intercepts be distributed as all other collections, so the words "and/or state tax" are being deleted from LAC 67:III.2514(B).

#### **Title 67**

### **SOCIAL SERVICES**

#### **Part III. Office of Family Support**

#### **Subpart 4. Support Enforcement Services**

#### **Chapter 25. Support Enforcement**

#### **Subchapter D. Collection and Distribution of Support Payments**

#### **§2514. Distribution of Child Support Collections**

A. Effective December 3, 1997, the agency will distribute child support collections in the following manner:

1. In cases in which the applicant/recipient (AR) currently receives Family Independence Temporary Assistance Program (FITAP) benefits, collections received in a month will be retained by the state to reimburse previous and current assistance amounts. If the collection amount exceeds the amount of unreimbursed grant, the excess will be refunded to the AR up to the current arrearage amount.

2. - 4. ...

B. There are general exceptions to distribution. Any collections received through intercept programs or income assignments are subject to refund to the noncustodial parent based on federal and state laws and regulations. Effective December 3, 1997, amounts collected through IRS intercepts will be applied to arrears in this order:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:304 (March 1997), amended LR 24:

Interested persons may submit written comments within 30 days of this publication to Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA 70804-9065. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on February 26, 1998, 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 (504) 342-4120 (Voice and TDD).

Madlyn B. Bagneris  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Support Enforcement—Child Support Distribution**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The administrative nature of the rule will require manual and on-line policy changes; however, the immediate cost of implementation in FY 97/98 is negligible. There are no anticipated costs or savings to local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The change in Subsection A affects state revenue collection. The following estimated amounts in child support collections will be retained by the state and used for state match and federal offset funds: \$397,922 in FY 97/98 and \$682,152 in FYs 98/99 and 99/00. Although Subsection B of the rule changes distribution of state tax intercepts, this effect on revenue collections cannot be determined since this source was previously applied directly to arrearages. Now it will first be applied to the monthly FITAP grant amount obligation. The rule has no effect on revenue collections of local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Recipients of FITAP cash assistance will no longer receive court-ordered support payments which exceed their FITAP grant amount, unless the collection amount is found to exceed the amount of unreimbursed cash assistance. Costs or benefits cannot be determined because of the variables; each case will depend on the amount collected, the amount not yet reimbursed, and the current FITAP assistance amount. The state tax intercept change has no effect on any persons or groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no estimated impact on competition and employment.

Vera W. Blakes  
Assistant Secretary  
9801#049

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Transportation and Development Office of the General Counsel**

Illegal Outdoor Advertising  
Signs (LAC 70:I.144)

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 adopt a rule entitled "Illegal Outdoor Advertising Signs" in accordance with R.S. 48:461.

**Title 70**

**TRANSPORTATION**

**Part I. Office of the General Counsel**

**Chapter 1. Outdoor Advertising Signs**

**§144. Illegal Outdoor Advertising Signs**

A. An outdoor advertising sign is deemed to be illegal if:

1. the owner has received a certified letter from the department under the provisions of R.S. 48:461 and has failed to respond within the time allotted;

2. the owner replied to the certified letter provided for in R.S. 48:461; received an administrative review as provided for hereafter; received a ruling of illegality and failed to appeal said ruling within the time allotted; or

3. the owner replied to the certified letter provided for in R.S. 48:461; received an administrative review as provided for hereafter; received a ruling of illegality; appealed said ruling as provided for hereafter; and a final ruling of illegality was rendered by the Court.

B. Penalties

1. If the owner fails to reply to the notice within 30 days, as set forth in §144.A.1, then the owner shall be assessed a penalty of \$100 per day for each day that the violation continues to occur, said fine to begin on the date specified in said notice.

2. If the owner requests and receives an administrative hearing as provided for in §144.D, and the hearing results in a finding that the owner's device is illegal, and he fails to appeal said finding, the owner shall be assessed a penalty of \$100 per day for each day that the violation occurred and continues to occur following 30-day written notice of the ruling of the administrative hearing.

3. If the owner receives and appeals the ruling of the administrative hearing and receives a final ruling of illegality rendered by a court of competent jurisdiction, then the owner shall be assessed a penalty of \$100 per day for each day that the violation occurred and continues to occur. Said penalty shall be retroactive to the date 30 days after written notice of the ruling of the administrative hearing.

C. An applicant who requests an outdoor advertising permit for a sign erected without a permit (even though permissible) shall be assessed a surcharge in addition to the permit fee in a sum equal to three times the permit fee.

D. There is hereby created within the Department of Transportation and Development an administrative review process which is available to permit applicants who have received notification that the department intends to remove their outdoor advertising signs or deny future permits.

1. Composition of the Administrative Review Committee. The administrative review committee shall be composed of representatives of the following divisions within the Department of Transportation and Development:

- a. Traffic Services and/or Maintenance Division;
- b. Legal Division;

c. Office of District Traffic Operation Engineer (office of particular district in which the sign is located) (nonvoting);

d. Traffic Engineering.

2. Authority of the Administrative Review Committee. The committee, pursuant to a majority vote, may arbitrate and resolve disputes which arise during the permit process and grant or deny relief to petitioning permittees.

3. The permittee must bring his complaint before the administrative review committee no later than 30 days after notification to remove the illegal sign, or no later than 30 days after receipt of a permit denial, whichever is applicable.

4. Duties of the Administrative Review Committee. The administrative review committee must meet in a timely fashion to review all protests filed by permittees. The administrative review committee must give each protester due notice of meeting time and place. The administrative review committee must notify the permittee of its action within seven working days of its meeting.

5. Rights of the Protesting Permittee. The permittee shall submit, in writing, his protest and all pertinent exhibits. Such submittal must be received five days before the review committee meeting. The permittee may appear before the administrative review committee to offer a brief explanation of his grievance.

6. Permittee's failure to submit an appeal in a timely manner shall constitute a denial of the administrative appeal.

E. Section 144 shall apply to any illegal sign installed prior or subsequent to its promulgation as a final rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the General Counsel, LR 24:

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 Mitchell Lopez, Traffic Planning Supervisor, Department of Transportation and Development, Box 94245, Baton Rouge, LA 70804-9245, phone (504) 358-9131.

Frank M. Denton  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Illegal Outdoor Advertising Signs**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no implementation costs for state or local governmental units. However, the state is subject to a loss of 10 percent of its highway funds allocated by the Federal Highway Administration if it fails to provide effective control of outdoor advertising.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The department could collect an additional \$11,250 per year in permit fees. This estimate is based on the collection of \$450

per sign, consisting of \$300 in average penalties and the \$150 normal fee, for an average 25 signs per year.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The \$11,250 per year will be paid by various sign owners who build outdoor advertising signs and then secure permits after the fact. The possibility of paying these additional fees will have the effect of encouraging owners to compete more fairly.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule will encourage fairer competition through the possibility of payment of higher permit fees.

Frank M. Denton  
Secretary  
9801#039

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

**Triploid Grass Carp (LAC 76:VII.901)**

The Department of Wildlife and Fisheries, Office of Fisheries does hereby give notice of intent to amend the rule governing triploid grass carp possession and transportation for aquatic plant control in Louisiana.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 9. Aquaculture - Exotic Species**

**§901. Triploid Grass Carp**

**A. Triploid Grass Carp Possession and Transportation for Aquatic Plant Control; Permit Required**

\* \* \*

**2. Definitions**

\* \* \*

*Triploid Grass Carp Sales Permit*—the official document that allows for the importation, transportation, possession and sale of live triploid grass carp in Louisiana, as approved by the secretary or his designee.

*Triploid Grass Carp Seller*—a properly licensed fish farmer who possesses a triploid grass carp sales permit.

**3. Triploid Grass Carp Habitat Management Request Procedures**

\* \* \*

b.i. The completed applications must be returned to the department, after which department personnel will review the application. Site visitations will be made:

- (a) if stocking exceeds 100 triploid grass carp;
- (b) if the department determines that such a site visit is necessary; or
- (c) by specific request from a water body owner.

ii. Site visitations made by fisheries staff of the Louisiana Cooperative Extension Service or other qualified fisheries professionals may be used as a substitution for a departmental site visit.

c. The department will ensure that the applicant is furnished a copy of rules and regulations pertaining to the importation, transportation and possession of live triploid grass carp in Louisiana.

\* \* \*

e. After approval, the application and fee will be forwarded to the License Section for processing.

**4. Transport of Triploid Grass Carp for Habitat Management**

a. Permittee must have on his immediate possession a Triploid Grass Carp Possession and Transportation Permit when purchasing and/or transporting live triploid grass carp. This permit must be signed by the secretary or his designee. Permittee shall show this permit upon demand by department representatives.

b. Prior to importation, fish must be certified as triploid grass carp by the U.S. Fish and Wildlife Service or a qualified agent or contractor approved by the department. Such certification must be furnished to and approved by the department prior to introduction of any fish into any waters of this state.

c. A bill of lading must accompany those individuals in possession of living triploid grass carp during transportation and shall include:

- i. source of triploid grass carp (hatchery);
- ii. name, address and phone number of seller;
- iii. name, address and phone number of buyer;
- iv. copy of triploid certification;
- v. total number of fish;
- vi. destination and route of shipment.

**5. Triploid Grass Carp Stocking**

a. No waters will be stocked without a department permit.

b. Permittee is responsible for containing triploid grass carp in his waters. Permittee is also responsible for erecting barriers to prevent the escape of triploid grass carp into adjoining waters.

**6. Triploid Grass Carp Habitat Management**

\* \* \*

h. Permittee is responsible for damages caused by any escapement.

i. Except in cases of mortality or unavoidable loss, restocking will be permitted only at intervals of three years or greater following the initial stocking.

j. The cost of an initial triploid grass carp permit shall be \$50 plus an additional fee for on-site inspection, if deemed necessary by the department, or by specific request from a water body owner as stated in §901.A.3.b.i.(c). An individual wishing to stock triploid grass carp supplementally after the period described in §901.A.6.i must notify the department, after which that individual will be re-permitted at an administrative fee of \$25.

k. Qualified universities and public entities conducting research approved by or in conjunction with the department shall be exempt from fee charges.

l. If a permittee terminates the use of triploid grass carp in the permitted water body, the permittee shall notify the department immediately and dispose of the triploid grass carp according to methods approved by the department.

m. In addition to all other legal remedies, failure to comply with any of the provisions in §901 shall be just cause to immediately suspend and/or revoke the permittee's permit. All triploid grass carp shall be destroyed at permittee's expense, under the department's supervision, within 30 days of permit revocation. Violation of any of the provisions of the permit constitutes a class four violation in accordance with R.S. 56:319(E).

n. Any permittee charged with violation of §901 has a right to make a written response to the alleged violation(s) to the secretary, requesting a hearing to review the alleged violation(s).

**B. Sale of Live Triploid Grass Carp for Aquatic Plant Control; Permit Required**

1. Individuals wishing to sell live triploid grass carp must first obtain a Triploid Grass Carp Sales Permit.

2. A triploid grass carp seller must be a properly licensed fish farmer.

3. The person shipping triploid grass carp shall display the words "TRIPLOID GRASS CARP" prominently on at least two sides of the vehicle or hauling tank with letters that are no less than 4 inches high.

4. A triploid grass carp seller is bound by the triploid grass carp possession and transportation regulations as stipulated in §901.A, except that:

a. the Triploid Grass Carp Sales Permit serves in lieu of the Triploid Grass Carp Possession and Transportation Permit;

b. the holders of a Triploid Grass Carp Sales Permit may sell only live triploid grass carp to holders of a valid Triploid Grass Carp Possession and Transportation Permit or a Triploid Grass Carp Sales Permit.

5. The department shall be notified at a designated telephone number (1-800-442-2511) of shipments of live triploid grass carp to permitted buyers at least 24 hours prior to shipment. Notification shall include buyer's name, address, permit number, number of fish and date and route of transport.

6. The initial Triploid Grass Carp Sales Permit will be issued to cover a period of time ending with the calendar year following the date of the permit. Permits shall be renewed annually thereafter. The cost of a Triploid Grass Carp Sales Permit is \$250.

7. An additional fee for the initial inspection of facilities will be assessed and charged.

8. Each Triploid Grass Carp Sales Permit holder will send the department an annual report detailing each sales transaction, including name and address of permitted buyer, permit number, date and number of triploid grass carp sold. These reports must be postmarked no later than the thirtieth day after the end of the calendar year.

9. In addition to all other legal remedies, failure to comply with any of the provisions in §901 shall be just cause to immediately suspend and/or revoke the permittee's permit. All triploid grass carp shall be destroyed at permittee's expense, under the department's supervision, within 30 days of permit revocation. Violation of any of the provisions of the permit constitutes a class four violation in accordance with R.S. 56:319(E).

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:318, 56:319 and 56:319.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Fisheries, LR 17:806 (August 1991), amended LR 19:511 (April 1993), LR 24:

Interested persons may submit written comments on the proposed rule to Bennie Fontenot, Jr., Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, no later than 4:30 p.m., Thursday, March 5, 1998.

James H. Jenkins, Jr.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Triploid Grass Carp**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed amended rule will result in an estimated \$7,956 savings to state governmental units. These savings will be applied to other existing priority projects. Local governmental units will not be impacted by the proposed rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule amendment will result in an estimated annual decrease in revenue collections by the state of \$1,090 per year. Revenues from local governmental units will not be impacted by this proposed rule amendment.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed action will benefit pond owners who will use triploid grass carp for aquatic weed control in the future. The proposed rule amendment would no longer mandate site visits by department personnel in ponds requiring less than 100 triploid grass carp, unless the permittee specifically requests a site visit or has a problem that requires a site visit. In addition, the proposed action will result in reduced paperwork for each permittee, since a special transportation permit would no longer be required. Based upon 1995 and 1996 data, the average pond owner permit costs would be reduced by \$14.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated effect on competition and employment from the proposed rule amendment.

Ronald G. Couvillion  
Undersecretary  
9801#031

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

Apprentice Fisherman License (LAC 76:VII.409)

The Wildlife and Fisheries Commission hereby gives notice of its intent to adopt a rule pertaining to an apprentice fisherman license.

The full text of this proposed rule may be viewed in its entirety in the emergency rule section of this issue of the *Louisiana Register*.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule, and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments on the proposed rule to Janis Landry, Fiscal Section, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, no later than 4:30 p.m., Thursday, March 5, 1998.

Daniel J. Babin  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Apprentice Fisherman License**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no costs or savings to local government units nor any increase or decrease in workload as a result of implementation of this proposed rule. A slight increase in workload to the state will occur from processing the new apprentice fisherman license. The actual increase in workload will depend upon the number of new license applications received. No additional costs or savings to the state are anticipated at this time, since the existing license form can also be used to issue the new apprentice license.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The amount of state revenue increase will depend on the number of licenses issued. The cost of the apprentice fisherman license will be one-half the cost of a commercial fisherman license or \$27.50 for a resident and \$230.50 for a nonresident. Since this is a new license, the department is unable to determine the amount of revenue that will be generated. Revenues from local government units will not be impacted.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Persons who have never held a commercial fisherman's license will be directly affected by the proposed rule. They will be able to purchase an apprentice license for one-half of the fee of a commercial license. By having held an apprentice license for two full years, they will meet the prior participation requirement for acquiring a mullet permit, spotted seatrout permit and a rod and reel license. No additional workload or additional paperwork will result from the proposed rule, however, the apprentice fisherman will be required to provide materials necessary to determine eligibility for acquiring the permits and license listed above. Individuals who obtained an apprentice license could experience an increase in income especially after the two-year apprentice period when they will be able to qualify for permits and licenses which will enable them to fish alone.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment in the public sector. An increase in competition and employment within the private sector will occur. The magnitude of this increase will depend on the number of new apprentice licenses issued. The more licenses issued, the more fishermen there will be targeting spotted seatrout, mullet and underutilized species.

Ronald G. Couvillion  
Undersecretary  
9801#033

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

# Administrative Code Update

CUMULATIVE ADMINISTRATIVE CODE UPDATE January - December, 1997				28			
LAC Title	Part.Section	Effect	Location LR 23 Month Page				
					I.105	Amended	Oct 1303
					I.903	Amended	Sep 1137
					I.911	Amended	May 563
					I.912	Amended	Aug 951
					I.1709	Amended	Jan 55
4	VII.1301-1323	Amended	Sep 1146		I.1713	Amended	Apr 404
	VII.917	Amended	Dec 1685		VI.Chapters 1 and 3	Adopted	Jun 711
					VI.Chapter 2	Adopted	Dec 1653
7	I.107	Adopted	Jun 703				
	V.1115 and 1127	Amended	Oct 1286	33	I.Chapter 9	Adopted	Mar 297
	V.Chapter 15	Amended	Mar 293		I.Chapter 11	Adopted	Sep 1141
	XIII.Chapter 1	Amended	Oct 1282		I.1135	Repromulgated	Oct 1303
	XV.9903,9914,9919,9921	Amended	Feb 195		III.223	Amended	Nov 1496
	XXI.101,107	Amended	Aug 949		III.223	Amended	Nov 1499
	XXI.905, 907	Amended	Nov 1493		III.223	Amended	Dec 1662
	XXI.511-535	Adopted	Aug 943		III.501,509,517	Amended	Dec 1667
	XXI.11715, 11717	Amended	Feb 196		III.504	Amended	Feb 197
	XXIII.Chapter 131	Amended	Feb 192		III.517	Amended	Apr 405
	XXIII.13113	Amended	Jul 853		III.1311	Amended	Jun 720
	XXV.107	Repromulgated	Nov 1493		III.1405	Amended	Jun 720
	XXV.135	Amended	Oct 1285		III.1503,1507	Amended	Dec 1677
	XXV.14101,14107,14113	Amended	Jul 855		III.Chapter 21	Amended	Dec 1678
	XXV.14112	Adopted	Jul 855		III.2104	Adopted	Nov 1497
	XXV.14116	Amended	Jul 855		III.2117	Amended	Dec 1661
	XXV.14121	Amended	Jul 854		III.2122	Repromulgated	Feb 197
	XXVII.14728	Amended	Feb 196		III.2132	Amended	Dec 1682
	XXIX.15107	Amended	Jul 854		III.2147	Amended	Nov 1508
	XXXV.Chapter 175	Amended	Jul 857		III.2147	Amended	Nov 1510
	XXXIX.101	Amended	Aug 943		III.Chap.21, Appendix A	Amended	Nov 1508
	XXXIX.20501,20701	Amended	May 553		III.2149	Amended	Nov 1507
					III.2307	Amended	Dec 1680
10	I.201	Amended	Mar 297		III.2511	Amended	Dec 1680
	I.201-203	Amended	Jun 706		III.2531	Amended	Nov 1509
	I.205	Repromulgated	Jun 707		III.Chapter 28	Adopted	Dec 1662
	I.701	Adopted	Jun 705		III.3003	Amended	Dec 1681
	III.111	Repealed	Jun 705		III.Chapter 51	Amended	Jan 56
	III.591	Adopted	Jan 47		III.5113,5116,5122,5311	Amended	Dec 1658
	XV.301-321	Amended	Sep 1128		III.5116, 5122	Adopted	Jan 61
	XXI.101	Adopted	Dec 1638		III.5301	Amended	Jan 63
					III.5311	Adopted	Jan 63
13	I.Chapter 9	Amended	Mar 295		III.5903,5910	Repealed	Nov 1496
	I.Chapter 50	Adopted	Dec 1641		III.5911	Amended	Nov 1496
	I.Chapter 60	Adopted	Dec 1638		V.105	Amended	Mar 298
					V.105	Amended	Jun 721
16	II.105	Amended	Jun 749		V.105	Amended	Aug 952
					V.Chapters 1,15,22,41	Amended	May 564
19	II.Chapters 1-13	Adopted	Jan 49		V.Chapters 1,3,15,22	Amended	May 567
	VII.Chapter 1	Amended	Jan 40		V.Chapters 1,13,19	Amended	Nov 1511
	VII.117,119,121	Repealed	Jan 43		V.2271	Amended	Mar 299
	VII.2301-2313	Amended	May 558		V.2515	Amended	Mar 299
	VII.Subpart 1 (Ch. 3-13)	Repealed	Jan 40*		V.Chapters 35,39,41	Amended	May 567
	VII.Subpart 3 (Ch.7,9,11)	Repealed	Jan 40*		V.Chapters 37,43,49	Amended	Nov 1511
	VII.Chapter 75	Adopted	May 555		V.3719	Repromulgated	Dec 1684
	VII.Chapter 81	Adopted	Jan 43		V.Chapter 38	Adopted	May 567
	VII.Chapter 81	Repealed	Dec 1644		V.Chapter 49,Appendix E	Adopted	Aug 952
	VII.Chapter 91	Adopted	Jan 36		VII.115,315	Amended	Sep 1145
	VII.Chapter 91	Repealed	Dec 1641		VII.315,727	Amended	Aug 954
	X.103,105,109,111,113	Amended	May 554		VII.523	Amended	Dec 1685
					VII.10536	Amended	Jun 722
22	XIII.103	Amended	Jul 861		IX.708	Amended	Jul 860
25	XI.101	Adopted	Jan 35		IX.2301	Amended	Feb 199
					IX.2341,2443	Amended	Aug 957



	IX.2560	Adopted	Feb	199		XLVII.3303,3347,3355	Amended	Aug	962
	IX.Chapter 23	Amended	Jun	722		LIII.507, 701, 737	Amended	Oct	1306
	IX.Chapter 23	Amended	Nov	1523		LIII.Chapter 8	Adopted	Oct	1313
	IX.2531,2533,2709	Amended	Aug	958		LIII.Chapter 9,1101	Amended	Oct	1307
	XV.112	Amended	Mar	299		LIII.1103-1127	Adopted	Oct	1310
	XV.325,1302,1307	Amended	Sep	1140		LIII.2107	Amended	Oct	1307
	XV.Chapters 5,6	Amended	Sep	1138		LIII.2535	Amended	Oct	1316
						LIX.Chapters 1-4,8	Amended	May	587
<b>34</b>	I.3103	Amended	Jan	67		LXI.1701	Amended	Jul	869
	XI.103	Amended	Mar	300		LXIII.201	Adopted	Jul	861
						LXVI.Chapters 9,12,13	Amended	Jan	71
<b>35</b>	I.1507	Amended	Aug	950		LXVI.1221	Repealed	Jan	74
	I.1706	Adopted	Jun	708		LXXXV.101-106	Amended	Aug	966
	I.1733	Amended	Aug	951		LXXXV.105	Amended	Nov	1529
	V.8305	Amended	Jun	707		LXXXV.302	Repealed	Aug	964
	XIII.10365	Amended	Jun	709		LXXXV.301,303,305,307	Amended	Aug	964
	XIII.10367	Amended	Jun	709		LXXXV.403,405	Amended	Sep	1147
	XIII.10379	Adopted	Jun	708		LXXXV.501,503	Amended	Aug	963
						LXXXV.701,707,709,711	Amended	Aug	969
<b>37</b>	III.Chapters 1,5,7,9	Amended	Jan	67		LXXXV.705	Amended	Dec	1686
						LXXXV.712	Adopted	Aug	970
<b>40</b>	I.1723	Amended	Jul	868		LXXXV.713	Adopted	Dec	1686
	I.2123	Amended	Jan	77		LXXXV.811	Amended	Dec	1686
	IV.113	Adopted	Jan	76		LXXXV.1063	Amended	Aug	968
						LXXXV.1103,1119,1112	Amended	Aug	968
<b>42</b>	III.111,112	Adopted	Oct	1321		LXXXV.1105	Amended	Dec	1686
	XI.2405,2413,2415	Amended	Oct	1322		LXXXV.1201	Amended	Aug	963
	XI.2423	Repealed	Jan	77		LXXXV.1211	Amended	Dec	1685
	XIII.2167	Repealed	Jan	77					
	XIII.2523	Amended	Jun	746	<b>48</b>	I.103,107,109	Repealed	Jul	866
	XIII.2524	Adopted	Jun	746		I.Chapter 23	Amended	Jan	74
	XIII.2709	Amended	Oct	1322		I.4539	Amended	Apr	413
	XIII.3501	Amended	Jun	747		I.16103-16123	Amended	Jul	862
	XIII.3503-3513	Repealed	Jun	747		I.16125-16129	Adopted	Jul	862
	XV.Chapter 1	Repromulgated	Jan	63		V.6303	Amended	Mar	301
	XV.141	Amended	Jan	67		V.6303	Repromulgated	May	579
						VII.Chapter 9	Adopted	Feb	200
<b>43</b>	XIX.1301-1305	Amended	May	583		IX.915,917	Amended	Sep	1147
	XIX.1501-1505	Amended	May	585					
	XIX.2301-2305	Amended	May	580	<b>50</b>	II.Chapter 101	Amended	Aug	970
	XIX.3501-3511	Amended	May	581		II.10146	Adopted	Oct	1317
						II.Chapter 109	Repromulgated	Sep	1149
<b>46</b>	I.1101, 1105	Amended	Apr	402		II.10927	Amended	Sep	1155
	XIX.Chapters 1-29	Amended	Sep	1112		II.10941	Amended	Sep	1156
	XIX.2703	Repealed	Sep	1126					
	XIX.Chapter 31	Adopted	Sep	1126	<b>52</b>	I.Chapters 1-16	Adopted	Oct	1288
	XXIX.303	Repealed	Nov	1495		I.Chapter 17	Amended	Jun	704
	XXIX.503	Amended	Nov	1495					
	XXIX.703	Adopted	Nov	1495	<b>55</b>	III.351-365	Adopted	Oct	1323
	XXXIII.105	Amended	Nov	1529		III.551-565	Adopted	Aug	990
	XXXIII.301	Repromulgated	Feb	199		III.808	Adopted	Dec	1701
	XXXIII.301	Amended	Nov	1524		V.Chapters 1-5, 11-23	Amended	Dec	1688
	XXXIII.303	Repealed	Feb	200		IX.183	Adopted	Aug	990
	XXXIII.304	Amended	Nov	1525					
	XXXIII.306	Amended	Nov	1528	<b>58</b>	I.301,303,305	Amended	Aug	996
	XXXIII.314	Adopted	Nov	1525		I.501,503,507	Amended	Aug	997
	XXXIII.316	Adopted	Nov	1527		I.1301,1305	Amended	Dec	1710
	XXXIII.409	Amended	Nov	1529		III.	Amended	Jan	85
	XXXIII.415,419	Amended	Nov	1526					
	XXXIII.915	Amended	Nov	1528	<b>61</b>	I.2901	Amended	Dec	1704
	XXXIII.1611,1613	Amended	Nov	1526		I.2903	Amended	Sep	1167
	XLL.701,703	Amended	Aug	950		I.4303	Amended	Dec	1703
	XLL.901	Amended	Sep	1136		I.4351	Amended	Nov	1530
	XLV.3701-3767	Adopted	Apr	405		I.4905	Amended	Sep	1167
	XLV.6903,6907	Amended	Sep	1146		I.4910	Amended	Apr	448
	XLV.6915-6923	Adopted	Jun	727		I.5301	Amended	Jan	78
	XLVII.Chapters 33,35	Amended	Aug	960		V.Chapters 7-35	Amended	Feb	204
	XLVII.3354	Adopted	Aug	960					

<b>67</b>	I.101	Amended	May	591		III.2543	Repealed	Jun	748
	III.101, 103	Amended	Jan	79		III.2753	Repealed	Feb	210
	III.401	Amended	Jul	869		III.2754	Adopted	Jun	748
	III.901	Amended	Dec	1707		III.2755	Adopted	Jun	749
	III.902	Adopted	Apr	448		III.2902	Adopted	Apr	450
	III.Chapter 11	Amended	Dec	1708		III.2903-2913	Amended	Apr	450
	III.1113, 1133	Amended	Jan	79		III.4702	Repromulgated	May	591
	III.1113	Amended	Apr	449		V.1001	Amended	Oct	1326
	III.1116,1118	Adopted	Apr	449		V.1103	Amended	May	590
	III.1123,1125,1129	Repealed	Dec	1708		VII.101	Amended	Aug	995
	III.1141, 1143	Amended	Apr	448					
	III.1149	Amended	Dec	1707	<b>71</b>	II.Chapter 3	Adopted	Nov	1530
	III.1163	Repealed	Dec	1707					
	III.1189,1191,1193	Repealed	Dec	1709	<b>70</b>	I.509	Amended	Jan	85
	III.1301, 1501	Amended	Apr	449		I.513	Adopted	Jan	84
	III.1301	Repealed	Dec	1709		III.1103	Adopted	Feb	210
	III.1506	Adopted	Apr	449					
	III.Chapter 19	Amended	Jan	79	<b>76</b>	III.325	Amended	Nov	1538
	III.1909	Repealed	Jan	79		III.329	Adopted	Jul	872
	III.1938,1940	Adopted	Jan	80		V.317	Adopted	Sep	1168
	III.1943	Repealed	Jan	82		VII.110	Amended	Aug	999
	III.1988, 1994	Adopted	Jan	83		VII.149	Amended	Sep	1168
	III.1988	Amended	May	590		VII.161	Amended	Oct	1327
	III.1988	Amended	Dec	1710		VII.165	Amended	Aug	998
	III.2005	Amended	Dec	1710		VII.329	Amended	Jan	86
	III.2304	Adopted	Jun	747		VII.349	Repromulgated	Feb	211
	III.2509,2512,2540	Amended	Jun	748		XIX.101,103	Amended	Jul	871
	III.2514	Adopted	Mar	304		XIX.107	Adopted	May	593
	III.2516	Adopted	Oct	1327					
	III.2532	Adopted	Oct	1326					
	III.2541	Amended	Feb	210					
	III.2542,2575,2576	Adopted	Jun	748					

\* See text in July issue, page 858.

# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Horticulture Commission

#### Landscape Architect Registration Examination

The next landscape architect registration examination will be given June 8-10, 1998, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows:

New Candidates: February 28, 1998

Re-Take Candidates: March 14, 1998

Reciprocity Candidates: May 8, 1998

Further information pertaining to the examination may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3118, Baton Rouge, LA 70821-3118, phone (504) 925-7772.

Any individual requesting special accommodations due to a disability should notify the office prior to February 28, 1998. Questions may be directed to (504) 925-7772.

Bob Odom  
Commissioner

9801#013

## POTPOURRI

### Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

#### St. James Parish Redesignation Plan

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that a revision in the State Implementation Plan (SIP) for ozone abatement procedures has been initiated to correct the point source emissions for 1990, and subsequently, to correct totals for the overall emissions budget found in the redesignation SIP which was approved by the U.S. Environmental Protection Agency on November 13, 1995. The Louisiana Department of Environmental Quality (LDEQ) is also revising the contingency plan to identify the triggering event that will cause implementation of a contingency measure, an actual monitored ozone violation of the National Ambient AirQuality Standards

(NAAQS), as defined in 40 CFR 50.9, determined not to be attributable to transport.

The public comment period begins on January 20, 1998 and ends on March 4, 1998. A public hearing will be held at 7 p.m., Wednesday, February 25, 1998 in the Council Chambers, 5800 La. Highway 44, Convent, LA, to receive comments on these proposed changes. Interested persons are invited to attend and submit written or present oral comments on the proposal.

Other written comments concerning the SIP change should be submitted no later than Wednesday, March 4, 1998, at 4:30 p.m. to Annette Sharp, LDEQ Air Quality Regulatory Division, Box 82135, Baton Rouge, LA 70884-2135, phone (504) 765-0914.

A copy of the SIP changes may be viewed at the Air Quality Regulatory Division from 8 a.m. to 4 p.m., Monday through Friday, 7290 Bluebonnet, Second Floor, Baton Rouge or the Capital Regional Office, 5222 Summa Court, Baton Rouge, LA.

Gustave Von Bodungen, P.E.  
Assistant Secretary

9801#085

## POTPOURRI

### Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

#### State Implementation Plan (SIP) (LAC 33:III.Chapters 3-30)

The Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division will conduct a public hearing to receive comments regarding revisions to the State Implementation Plan (SIP). The revisions include amendments to various rules in LAC 33:III.Chapters 2, 5, 15, 21, 23, 25, and 30.

The hearing will be held on February 27, 1998, at 1:30 p.m. on the third floor of the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA. All interested persons are invited to attend and submit oral comments on the SIP revisions. Written comments may be submitted no later than March 6, 1998, to Carla Ogden, Air Quality Division, Box 82135, Baton Rouge, LA 70884-2135 or to 7290 Bluebonnet Boulevard, Second Floor, Baton Rouge, LA 70810.

A copy of the SIP changes may be viewed Monday through Friday, from 8 a.m. to 4:30 p.m., at the following DEQ locations:

Headquarters  
Air Quality Division  
7290 Bluebonnet Boulevard  
Second Floor  
Baton Rouge, LA

Capitol Regional Office  
5222 Summa Court  
Baton Rouge, LA

Acadiana Regional Office  
100 Asma Boulevard  
Suite 151  
Lafayette, LA

Northeast Regional Office  
804 Thirty-First Street  
Suite D  
Monroe, LA

Bayou Lafourche Regional Office  
104 Lococo Drive  
Raceland, LA

Northwest Regional Office  
1525 Fairfield  
Room 11  
Shreveport, LA

Kisatchie Central Regional Office  
402 Rainbow Drive  
Pineville, LA

Southeast Regional Office  
3501 Chateau Boulevard  
W. Wing  
Kenner, LA

Southwest Regional Office  
3519 Patrick Street  
Room 265A  
Lake Charles, LA

The SIP is also distributed to the State Library of Louisiana, Louisiana Section, 760 North Third Street, Baton Rouge, LA, and 25 other depository libraries throughout the state. Please contact the State Library for locations and viewing times.

Comments may be directed to Carla Ogden at (504) 765-0916.

Gustave A. Von Bodungen, P.E.  
Assistant Secretary

9801#084

## POTPOURRI

### Department of Environmental Quality Office of the Secretary

#### Risk/Cost/Benefit Statement for Laboratory Accreditation (OS007)

The following is an abbreviated version of the Risk/Cost/Benefit Statement prepared for the Joint Legislative Committee on the Budget, which consists of the main body of the statement but which excludes the attachments. The complete statement may be viewed or purchased at the Department of Environmental Quality, Investigations and Regulatory Development Division, Fourth Floor, 7290 Bluebonnet Road, Baton Rouge, LA. Additionally, the complete statement is available on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>. Call (504) 765-0399 for additional information.

#### Introduction

The Louisiana Department of Environmental Quality is proposing the Laboratory Accreditation Rule (OS007). This rule seeks to establish a formal regulatory program to provide for accreditation of commercial environmental laboratories

which produce environmental data pursuant to department regulations or permits or to the Environmental Quality Act (R.S. 30:2001 et seq.). This program is authorized under R.S. 30:2011(D)(22). This program will include commercial environmental laboratories in Louisiana and those outside the state which do business in Louisiana. The department roughly estimates this to be approximately 120 laboratories.

This statement is prepared to satisfy the requirements of R.S. 30:2019(D) and R.S. 49:953(G) (Acts 600 and 642 of the 1995 Louisiana Legislature, respectively). However, this document does not purport to be a scientific quantitative analysis of cost, risk, or economic benefit, although costs of implementation were quantified to the extent practical.

The department interprets the statutes above as allowing a qualitative analysis of economic and environmental benefit where a more quantitative analysis is not practicable and when the qualitative benefits outweigh the costs in a manner which is intuitively obvious. The statute allows the secretary to certify, based on qualitative benefits alone, that the benefits of a rule outweigh the costs.

This is the approach which is taken with this risk/cost/benefit statement. As discussed further in this document, the Laboratory Accreditation Rule provides indirect environmental and economic benefits by ensuring high quality laboratory data. Assessing dollar benefits of avoided environmental risk or economic benefits of this rule is not practicable. In addition, the department asserts that the indirect and direct environmental and economic benefits to be derived from this rule will, in the judgment of reasonable persons, outweigh the costs associated with the implementation of the rule and that the rule is the most cost-effective alternative to achieve these benefits.

#### Risks Addressed by the Rule

Although the Laboratory Accreditation Rule does not address direct risks to human health or the environment, it does impact risk that indirectly can have great effects on human health and environment. Most regulatory programs of the department, such as the air, water, waste, and radiation programs rely principally on self-reported data from regulated entities to determine environmental violations, environmental contamination, human health and environmental risk, environmental contamination and damage, etc. Much of this self-reported information is laboratory data (e.g., discharge monitoring reports, air quality data, groundwater monitoring reports). It is absolutely essential to these programs that these laboratory data are sound. In addition, most facilities regulated by the department rely on third-party, commercial laboratories to produce part or all of their laboratory data which, in turn, is submitted to the department. These facilities are ultimately responsible for the quality of this data. It is of the utmost importance that the department, the regulated community, and the public have confidence in environmental laboratory data.

This rule addresses the direct risks of use of improper or inconsistent laboratory procedures and methods; use of faulty laboratory equipment; failure to properly maintain laboratory equipment; poor or fraudulent record keeping; improper

QA/QC procedures or data; fraudulent laboratory data; fraudulent QA/QC data; employment of untrained or unqualified personnel; and the simple accumulation of minor procedural, equipment, or record keeping errors that lead to overall lower quality laboratory data.

These direct risks can lead to many indirect risks that may be of great consequence. For example, poor or fraudulent data can lead to under reporting or over reporting of environmental violations (e.g., incorrect NPDES Discharge Monitoring Reports). It can also cause underestimation or overestimation of the extent of contamination of a remediation site. Underestimation or overestimation of human exposure to toxic agents can result from incorrect laboratory sample results. Another example is liner construction for hazardous waste or solid waste disposal facilities (e.g., landfills). Incorrect or fraudulent sample results from QA/QC testing during liner construction can lead to improper liner construction and ultimate liner failure.

Poor or fraudulent initial background groundwater sample results at a hazardous waste or solid waste disposal facility or at a remediation site can cause the subsequent groundwater monitoring program to be useless. Improper QA/QC procedures or data can render associated sample results as suspect or useless, even though they may in reality be accurate. Poor or fraudulent sample data generated during a permit application process (e.g., emission sources or wastewater discharges) may result in permit limits or conditions that are either overprotective or underprotective of human health or the environment.

These or other risks can lead to increased risk to human health or the environment (e.g., leaking landfill liners, incomplete soil or groundwater cleanups, improper discharges or emissions to surface water or air, delayed or missed detection of significant groundwater contamination, etc.). On the other hand, these risks can lead to increased and unnecessary expense to regulated facilities (e.g., overtreatment of discharges or emissions due to overly protective permits, reinstallation or repair of improperly-installed liners, unnecessary cleanup of soils or groundwater, etc.).

#### **Laboratory Fraud**

Fraudulent activity, as stated earlier, is one of the risks addressed by the rule. Although the extent of fraudulent activities in environmental laboratories in Louisiana is not known, fraud does occur. At least four recent cases of laboratory fraud are worth noting.

#### **State of Louisiana vs. Laboratory A**

In August 1992, a chemical manufacturing company in St. Gabriel, LA, pleaded no contest to charges of producing fraudulent laboratory QA/QC data in their in-house laboratory and agreed to pay a \$250,000 fine and \$50,000 each to the Iberville Parish Drug Task Force and the East Baton Rouge-Pointe Coupee Drug Task Force. In addition, the company terminated the employment of seven laboratory employees and demoted the laboratory manager to a nonsupervisory level.

In this case, the involved employees logged false spike and blank sample results (associated with the NPDES and

LWPDS permits) over at least a two-year period. Apparently, the data reported on the facility's discharge monitoring reports were not affected.

#### **United States vs. Laboratory B**

In January 1991, charges of submission of false claims were filed against a commercial laboratory in Baton Rouge, LA, by the U.S. Attorney's office. The company pleaded guilty and agreed to pay a \$500,000 fine. This commercial lab was performing work on EPA contract.

In this case, two laboratory employees admitted to falsifying laboratory sample results on the instructions of the laboratory manager.

#### **United States vs. Laboratory C**

In April 1992, three employees of a commercial laboratory in St. Rose, LA, pleaded guilty to conspiracy to submit false claims. Two were fined \$500 and sentenced to two years probation; one was fined \$250 and sentenced to two years probation. This commercial lab was performing superfund work on contract with EPA.

In this case, the three employees intentionally failed to calibrate a GC/MS instrument and manually overrode the automatic features of the instrument in order to obtain false analytical results, which were ultimately submitted to EPA.

#### **United States vs. Laboratory D**

In July 1995, the vice president/manager of a commercial laboratory in Lafayette, LA, pleaded guilty to falsification of laboratory data. In a pretrial diversion agreement, charges against the company were deferred for two years based on the company meeting certain conditions, including submitting to independent lab audits. This commercial laboratory was performing NPDES discharge analysis for oil production companies and publicly-owned treatment works.

In the case, the defendant, who was both vice president of the company and manager of the laboratory, was altering lab results which were obtained by lab technicians, fabricating lab data where no analysis was performed, and directing lab technicians to falsify lab results.

#### **Environmental and Public Health Benefits**

Although environmental and public health benefits of the rule are not to be quantified in this statement, on a qualitative basis the benefits are self-evident. This rule will address the direct and indirect risks discussed earlier and produce significant environmental and public health benefits.

Specifically, through a reasonable program of accreditation, self-reporting, performance sampling, and third-party audit inspections, this program will significantly reduce the frequency of laboratory errors and fraudulent results, and will maintain and increase confidence of regulators, customers, and the public in commercial environmental laboratory data. The accreditation program will also help to level the highly competitive playing field among commercial laboratories in the state. The program will provide a means of overseeing out-of-state laboratories which provide services to Louisiana customers. It will also allow accredited in-state laboratories to receive reciprocal accreditation from other states in order to provide analyses to customers in those states. Reciprocal accreditation from multiple states allows laboratories to avoid applying for accreditation in every state, thereby lowering their operating costs.

In directly reducing the frequency of errors and fraudulent results, the laboratory accreditation program will also yield indirect benefits. Improved monitoring and enforcement of emission, discharge, and disposal regulations and permits should result from better laboratory data. Further, the accreditation program can be expected to reduce the indirect environmental and human health risks, some of which were listed in the previous section. Better laboratory data is a double-edged sword. It makes catching violators easier, but it also may result in fewer regulated entities being unfairly penalized. Also, assessment and remediation of contaminated sites become a more precise, fair, and environmentally-protective process with good laboratory data.

**Estimated Social and Economic Costs**

**Implementation Costs to Regulated Community**

Costs to the regulated community of complying with the rule were estimated by surveying a sample of affected laboratories. It should be noted that these costs were strictly based on these laboratory survey responses which were interpreted using best agency judgment. There is the strong possibility that these figures overstate actual implementation costs to some degree because many laboratories in the state already meet all or part of the rule requirements and will incur lower implementation costs. However, to what degree this is true is not easy to quantify.

Surveys were sent to 43 laboratories within the state. Completed surveys were returned by 19 environmental laboratories. These survey results were averaged to obtain a per-laboratory cost to implement the rule. The average costs per laboratory were as follows:

First Year Costs Per Lab	\$38,412
Second Year Costs Per Lab	\$26,777
Third Year Costs Per Lab	\$21,215
Total Costs Per Lab	\$86,404

These costs do not include fees charged by the department. These per-laboratory costs were multiplied by 120 environmental laboratories to determine a total cost to the regulated community for implementing the rule. These total costs were as follows:

Total First Year Cost	\$ 4,609,440
Total Second Year Cost	\$ 3,213,240
Total Third Year Cost	\$ 2,545,800
Total Three-Year Cost	\$10,368,480

**Fee Costs to Regulated Community**

Under the rule, each laboratory must submit a \$500 accreditation fee once every three years. In addition, each laboratory must submit an annual fee which ranges from \$250 to \$2500 depending on the size and complexity of the laboratory. To estimate costs to the regulated community due to fees, it was assumed that each laboratory would pay an average annual fee equal to the midpoint between the minimum and maximum annual fees, or \$1375 per year. Using the figure of 120 laboratories, the following costs due to fees were estimated:

Total First Year Accreditation Fees	\$ 60,000
Total First Year Annual Fees	\$165,000
Total Second Year Annual Fees	\$165,000
Total Third Year Annual Fees	\$165,000
Total Three-Year Fees	\$555,000

**Audit Costs to the Regulated Community**

The rule requires that each laboratory must undergo an independent third-party audit once every three years. Based on telephone inquiries, audits by private auditors are assumed to range in cost from \$500 to \$750 per day and last from 2.5 to 3.5 days. Averaging these figures gives an average per day cost of \$625 and average audit duration of three days. Based on this, the average audit can be assumed to cost \$1875. Using the figure of 120 laboratories, the following costs due to audit expenses were estimated:

Total First Year Audit Expenses	\$ 75,000
Total Second Year Audit Expenses	\$ 75,000
Total Third Year Audit Expenses	\$ 75,000
Total Three-Year Audit Expenses	\$225,000

**Total Costs to Regulated Community**

Therefore, the total costs to the regulated community over three years can be estimated by totaling compliance costs, audit costs, and fee costs, as follows:

	Implementation	Fees	Audit	Expense Total
First Year Costs	\$ 4,609,440	\$225,000	\$ 75,000	\$ 4,909,440
Second Year Costs	\$ 3,213,240	\$165,000	\$ 75,000	\$ 3,453,240
Third Year Costs	\$ 2,545,800	\$165,000	\$ 75,000	\$ 2,785,800
Total Three-Year Costs	\$10,368,480	\$555,000	\$225,000	\$11,148,480

**Agency Costs**

Agency Costs were estimated by totaling personnel, equipment, and supply costs for the number of new department personnel that would be needed to implement the rule. The new personnel identified were as follows:

- Environmental Quality Coordinator;
- Environmental Chemist 3;
- Environmental Chemist 2;
- Environmental Program Analyst 1; and
- Word Processor Operator 1.

Costs for these personnel were estimated using midpoint salaries plus related benefits, and using generic equipment, supply, travel, and telephone costs. These were estimated as follows:

Total First Year Agency Cost	\$187,944
Total Second Year Agency Cost	\$188,489
Total Third Year Agency Cost	\$194,969
Total Three-Year Agency Cost	\$571,402

It should be noted that above agency costs do not represent additional costs of implementing the rule, as these agency costs will be borne by the user fees which were previously counted.

**Total Cost of Implementation**

The total estimated cost of implementing the rule over the first three years is \$11,148,480, which yields an average annual cost of approximately \$3,716,160.

**Conclusion**

The department understands that there are significant costs associated with the implementation of the Laboratory Accreditation Rule. However, as described in this document, the department believes that the benefits of avoided environmental and public health risk, as well as other benefits, significantly outweigh the costs of implementation of the rule in a manner that is intuitively obvious.

J. Dale Givens  
Secretary

9801#080

**POTPOURRI**

**Department of Environmental Quality  
Office of the Secretary  
and**

**Office of Legal Affairs and Enforcement  
Investigations and Regulation Development Division**

Reportable Quantity List  
(LAC 33:I.3931)(OS023\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., the secretary gives notice that the department is withdrawing the proposed rule, Log OS023\*, Reportable Quantity List Amendments. The proposed rule would establish reporting requirements for 361 new pollutants and adjust the existing reporting thresholds for 81 pollutants. This proposal was published in the October 20, 1997, issue of the *Louisiana Register*.

As a result of comments received and further review by the staff, the department has chosen to withdraw the rule known as Log OS023\*. A new rule reflecting many of the public comments and suggestions by the staff will be proposed in the near future. Questions may be directed to Patsy Deaville at (504) 765-0399.

Tim B. Knight  
Administrator

9801#083

**POTPOURRI**

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

**Spring/Summer Examination Dates Correction**

(Editor's Note: Examination dates were incorrectly published in the November 1997 *Louisiana Register*, page 1591).

The Board of Veterinary Medicine will administer the national and state examinations for licensure to practice veterinary medicine on the following correct dates:

Examination	Date	Deadline to Apply
National Board	Tuesday, April 14, 1998	Friday, February 27, 1998
Clinical Competency Test	Wednesday, April 15, 1998	Friday, February 27, 1998
State Board	First Tuesday of Every Month	No less than two weeks prior to desired exam date

Applications for all examinations must be received on or before the deadline date. Applications and information may be obtained from the board office at 263 Third Street, Suite 104, Baton Rouge, LA 70801 or by calling (504) 342-2176.

Charles B. Mann  
Executive Director

9801#005

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation**

**Orphaned Oilfield Sites**

Office of Conservation records indicate that the oilfield sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	Well Name	Well No.	Serial No.
Harold J. Basso	Wildcat	LL & E	001	058349
Joel B. Brown	Caddo Pine Island	G M Huckabay	001	166653
Joel B. Brown	Caddo Pine Island	Hudson-Bonnette	001	161182
Joel B. Brown	Caddo Pine Island	CV RA SUB;Hobbs	001	165010
Joel Brown	Caddo Pine Island	Florence	001	159455
Joel Brown	Caddo Pine Island	CV RA SUA;Joel B Brown	001	155306
Energy Corp. of America, Inc.	Caillou Island	LL & E	002	059411
Ethredge Oil Company	Caddo Pine Island	Thacker	002	172494
Ethredge Oil Company	Caddo Pine Island	Barr-Peak	001	158613
Ethredge Oil Company	Caddo Pine Island	Muslow A	001	038912

Ethredge Oil Company	Caddo Pine Island	Barr-Peak	002	158614
Ethredge Oil Company	Caddo Pine Island	J Hamm	001	158642
Ethredge Oil Company	Caddo Pine Island	Thacker	001	132942
Ethredge Oil Company	Caddo Pine Island	Thigpen-Herold	002	158534
Ethredge Oil Company	Caddo Pine Island	D T Land Est	001	022154
Ethredge Oil Company	Caddo Pine Island	D T Land Est	002	184671
Ethredge Oil Company	Caddo Pine Island	Gamm A	001	038211
Ethredge Oil Company	Caddo Pine Island	Gamm A	002	039458
Ethredge Oil Company	Caddo Pine Island	Bussa	001	158160
Ethredge Oil Company	Caddo Pine Island	Bronner-Simon	001	053742
Ethredge Oil Company	Caddo Pine Island	Muslow	001	111662
Ethredge Oil Company	Caddo Pine Island	Walke-Bourquin	001	172078
Ethredge Oil Company	Caddo Pine Island	Waite	001	134962
Ethredge Oil Company	Caddo Pine Island	Noel Est	001	035078
Ethredge Oil Company	Caddo Pine Island	Thigpen-Herold	001	158533
Ethredge Oil Company	Caddo Pine Island	Henderson et al	001	174264
Ethredge Oil Company	Caddo Pine Island	W G Godfrey	001	158615
C.H. Lyons	Shreveport	W C Agurs	001	022388
St. Mary Oil Company	Charenton	W C Hertel et al	B-3	023317
W. H. Talbot	Charenton	Mrs Sidney Kern	008	023396

Warren A. Fleet  
Commissioner

9801#036

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation  
Injection and Mining Division**

Public Hearing—Oilfield Waste Facility

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, notice is hereby given that the commissioner of Conservation will conduct a public hearing at 6 p.m., Tuesday, March 3, 1998, at the St. Mary Parish Council Meeting Room, 500 Main St., Franklin, LA.

At such hearing, the commissioner, or his designated representative will hear testimony relative to the application of Environmental Treatment Team, Inc., Box 84127, Baton Rouge, LA 70884-4217. The applicant requests authorization to operate a commercial Nonhazardous Oilfield Waste (NOW) processing facility in Morgan City. NOW will be mechanically and chemically de-watered. The recovered solids will be used as Subtitle "D" industrial sanitary landfill cover and the recovered water processed for discharge to the Morgan City Waste Water Treatment Plant (W.W.T.P.). The proposed facility will be located in St. Mary Parish, in Section 7, Township 16S, Range 13E.

The application is available for inspection by contacting Pierre Catrou, Office of Conservation, Injection and Mining Division, Room 257 of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, or by visiting the St. Mary Parish Council Office in Franklin, LA, or the Morgan City branch of the St. Mary Public Library located at 220 Everett Street, Morgan City, LA. Verbal information may be received by calling Pierre Catrou at (504) 342-5567.

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, March 10, 1998, at the Baton Rouge Office. Comments should be directed to Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804, Re: Docket No. IMD 98-01, Commercial Facility, St. Mary Parish.

Warren A. Fleet  
Commissioner

9801#081

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation  
Injection and Mining Division**

Public Hearing—Oilfield Waste Facility

Pursuant to the provisions of the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, and the provisions of the Statewide Order No. 29-B, notice is hereby given that the commissioner of Conservation will conduct a public hearing at 6 p.m., Tuesday, March 3, 1998, at the St. Mary Parish Council Meeting Room, 500 Main Street, Franklin, LA.

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application



of US Liquids of Louisiana, Box 1467, Jennings, LA 70546-1467. The applicant intends to drill, construct, and operate three Class II nonhazardous oilfield waste fluids injection wells in Section 16, Township 16 South, Range 12 East of St. Mary Parish, LA.

The application is available for inspection by contacting Pierre Catrou, Office of Conservation, Injection and Mining Division, Room 257 of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, or by visiting the St. Mary Parish Council Office in Franklin, LA, or the Morgan City branch of the St. Mary Public Library located at 220 Everett Street, Morgan City, LA. Verbal information may be received by calling Pierre Catrou at (504) 342-5567.

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, March 10, 1998, at the Baton Rouge Office.

Comments should be directed to Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804, Re: Docket Number IMD 98-03, Commercial Facility, St. Mary Parish.

Warren A. Fleet  
Commissioner

9801#082

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