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This public document was published at a total cost of \$2,575.00. Seven hundred copies of this public document were published in this monthly printing at a cost of \$2,575.00. The total cost of all printings of this document including reprints is \$2,575.00. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:30. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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# Executive Orders

## EXECUTIVE ORDER MJF 02-06

### Information Technology Policies

WHEREAS, Act No. 772 of the 2001 Regular Session of the Louisiana Legislature, relative to information technology, created the Office of Information Technology (hereafter "OIT") and the position of the chief information officer (hereafter "CIO") to manage and direct information technology initiatives and activities (hereafter "I.T.") for the agencies in the executive branch of government;

WHEREAS, the CIO is in the process of developing the state master plan and establishing I.T. standards, architectures, and guidelines for hardware, software, services, contractual arrangements, consolidation of systems and management of systems (hereafter "I.T. policies") for a number of I.T. initiatives for deployment and implementation throughout all state executive branch agencies;

WHEREAS, pursuant to Act No. 772, the CIO is required to adopt rules and regulations in accordance with the administrative procedure act to implement the state master plan and establish such I.T. policies;

WHEREAS, this rule-making process will take several months and, during this period, agencies will be making I.T. purchases and budget decisions, which should be made consistently with the I.T. policies being developed; and

WHEREAS, in the best interest of the state of Louisiana, it is necessary to immediately authorize the CIO to establish and direct the implementation of I.T. policies for statewide application;

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 CIO is hereby authorized to establish and direct the implementation of I.T. policies for statewide application within the executive branch.

SECTION 2: The CIO shall issue agency bulletins specifying the I.T. policies set for each affected executive branch agency. These agency bulletins will be published on

the Office of Information Technology's website at [www.doa.state.la.us/oit](http://www.doa.state.la.us/oit) and sent electronically to affected agencies and others.

SECTION 3: All executive branch agencies subject to the authority of the Office of Information Technology pursuant to Act No. 772 shall follow the I.T. policies set forth in the appropriate agency bulletins established by the CIO in both their current procurement activities and in their budget planning processes for preparing their executive budget requests for the next fiscal year.

SECTION 4: The CIO is authorized to grant exemptions to such agency bulletins on a case by case basis.

SECTION 5: The CIO shall continue with the process of adopting rules and regulations as required by Act No. 772. When such rules and regulations are adopted, they shall supercede any I.T. policies issued pursuant to this Order.

SECTION 6: This Order is not intended to and does not expand the authority of the CIO to any agency, entity, or program other than as provided in Act No. 772.

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

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 27th day of March, 2002.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0203#001

# Emergency Rules

## DECLARATION OF EMERGENCY

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

#### Restriction on Application of Certain Pesticides (LAC 7:XXIII.143)

In accordance with the Administrative Procedure Act, R.S. 49:950.B and R.S. 3:3203.A, the commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in amending the following rules for the implementation of regulations governing the use of the pesticide 2, 4-D and products containing 2, 4-D.

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

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

This Rule becomes effective on April 3, 2002 and will remain in effect 120 days.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXIII. Pesticide

### Chapter 1. Advisory Commission on Pesticides

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

##### A. - O. ...

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

##### 1. Registration Requirements

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

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

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

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

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

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

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

ii. Applications of 2, 4-D, or products containing 2, 4-D, shall not be made in any manner by any commercial or private applicators between May 1 and August 15 in the areas listed in LAC 7:XXIII.143.P.3.a.i., except commercial applications of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually between May 1 and August 15 in the area south of La. Highway 104 and La. Highway 26 and north of U.S. Highway 190 between U.S. Highway 165 and La. Highway 13 in the parishes of Allen and Evangeline, and except upon written application to and the specific written authorization by the Assistant Commissioner of the Office of Agricultural and Environmental Sciences, or in his absence the Commissioner of Agriculture and Forestry.

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

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

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

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

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

zone;

vii. any other relevant data.

5. Monitoring of 2, 4-D or Products Containing 2, 4-D

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

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

6. Determination of Appropriate Action

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 10:193 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1671 (October 2001), LR 28:

Bob Odom  
Commissioner

0204#031

## DECLARATION OF EMERGENCY

### Student Financial Assistance Commission Office of Student Financial Assistance

Application Deadlines (LAC 28:IV.503)

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

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

prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective March 25, 2002, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

## Title 28

### EDUCATION

#### Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs Chapter 5. Application; Application Deadlines and Proof of Compliance

##### §503. Application Deadlines

A. - A.4. ...

B. Final Deadline for Full Award

1. In order to receive the full benefits of a TOPS award as provided in §701.E and 803.D, the final deadline for receipt of a student's initial FAFSA application is July 1st of the Academic Year (High School) in which a student graduates. For example, for a student graduating in the 2000-2001 Academic Year (High School), the student must submit the initial FAFSA in time for it to be received by the federal processor by July 1, 2001.

2. Notwithstanding the deadline established by §503.B.1 above, applicants who enter on active duty in the U.S. Armed Forces have a final deadline for receipt of their initial FAFSA application of one year from the date of separation from active duty. In order to be eligible under this subsection, the applicant must meet the requirements of §703.A.4.b or d or §803.A.4.b or d of these rules and must not have been discharged with an undesirable, bad conduct or dishonorable discharge.

C. - E. ...

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

HISTORICAL NOTE: Promulgated LR 24:635 (April 1998), amended LR 24:1900 (October 1998), LR 25:655 (April 1999), LR 25:2396 (December 1999), LR 25:1994 (September 2000), repromulgated LR 27:1847 (November 2001), amended LR 28:447 (March 2002), LR 28:

George Badge Eldredge  
General Counsel

0204#016

## DECLARATION OF EMERGENCY

### Office of the Governor Ground Water Management Commission

Groundwater Management  
(LAC 33:IX.Chapters 31-35)

Editor's Note: In accordance with OSR uniform formatting procedure, these rules have been moved from Title 70 to Title 33 for topical placement.

Pursuant to the provisions of the Louisiana Administrative Procedure Act, R.S. 49:953.(1), (2), 954.B(2), as amended, on May 18, 2001, the Groundwater Management Commission (Commission) approved the subject Emergency Rules for hearing regarding the designation of Critical Groundwater Areas on August 20, 2001 and revised herein on November 28, 2001, and reissued on March 20, 2002. The Emergency Rules satisfy the requirements mandated by Act 446 of the 2001 Regular Session, which states that the

commission shall develop and promulgate rules and regulations for the determination of critical groundwater areas and possible limitation of access to groundwater sources and response to emergency situations. Failure to designate and protect critical ground areas may endanger drinking water, as well as the ability of industry and agriculture to utilize these fresh water aquifers for commercial purposes. The Act specifically requires that public hearing be held in such matters and the attached Emergency Rules provide the mechanism to meet that requirement.

These Emergency Rules were reissued pending final Rules.

These Rules will be effective March 28, 2002, and remain so for 120 days.

**Title 33**  
**ENVIRONMENTAL QUALITY**

**Part IX. Water Quality**

**Subpart 2. Groundwater Management**

**Chapter 31. General Provisions**

**§3101. Applicability**

A. These Rules shall be applicable to hearings relative to the commission's jurisdiction to determine critical groundwater areas, potential critical ground water areas and a ground water emergency. The Rules shall not alter or change the right of the commission to call a hearing for the purpose of taking action with respect to any matter within its jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

**§3103. Definitions**

A. The words defined herein shall have the following meanings when used in these Rules. All other words used and not defined shall have their usual meanings unless specifically defined in Title 38 of the Louisiana Revised Statutes.

*Beneficial Purpose or Beneficial Use* Cthe technologically feasible use of ground water for domestic, municipal, industrial, agricultural, recreational or therapeutic purposes or any other advantageous use.

*Commission* CGround Water Management Commission authorized by R.S. 38:3099.3.A.

*Critical Ground Water Area (CGWA)* Can area where sustainability of an aquifer is not being maintained under current or projected usage or under normal environmental conditions which are causing a serious adverse impact to an aquifer.

*Ground Water* Cwater suitable for any beneficial purpose percolating below the earth's surface, including water suitable for domestic use, supply of a public water system or containing fewer than 10,000 mg/l total dissolved solids.

*Ground Water Emergency* Cshall mean an unanticipated occurrence as a result of a natural force or a man-made act which causes either the depletion of a ground water source or a lack of access to a ground water source or the likelihood of excessive pumping from a ground water source.

*Person* Cany natural person, corporation, association, partnership, receiver, tutor, curator, executor, administrator, fiduciary, or representative of any kind, or any governmental entity.

*Potential Critical Ground Water Area* Ca ground water area where drilling of new well(s) or pumpage at current rates could result in creation of a CGWA.

*Sustainability* Cthe development and use of ground water in a manner that can be maintained for the present and future time without causing unacceptable environmental, economic, social, or health consequences.

*User* Cany person making any beneficial use of ground water from a well or wells owned or operated by such person or from a well or wells owned or operated solely for the production of water used by such person.

*Well or Water Well* Cany well drilled or constructed for the principal purpose of producing ground water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

**Chapter 33. Application Procedure**

**§3301. Who May Apply**

A. Any person owning property, a water well or utilizing water from an aquifer within the jurisdiction of the commission shall have the right to file an application with the commission calling for a public hearing relative to said aquifer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

**§3303. Notice of Intent**

A. A Notice of Intent to file an application will be published in the official parish journals. Such notice will include:

1. name, address, and telephone number;
2. a brief description of the subject matter of the proposed application;
3. a brief description of location including parish, section, township, range, and a map which shall be sufficiently clear to readily identify the location of the proposed CGWA;
4. a statement that, if the area is designated a CGWA, ground water use may be restricted;
5. a statement that all comments should be sent to:

Commissioner of Conservation

Post Office Box 94275

Baton Rouge, LA 70804-9275

ATTN: Groundwater Management Commission Staff

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

**§3305. Application**

A. Application for Hearing. The application shall be filed in duplicate no sooner than 30 days and no later than 60 days after publication of the Notice of Intent. The application must include:

1. the name, address, telephone number, and signature of applicant;
2. a statement identifying the applicant's interest which is or may be affected by the subject matter of the application;
3. identification of the source of ground water (aquifer) to which the application applies;

4. identification of the proposed critical ground water area, including its location (section, township, range and parish) and U.S. Geological Survey topographic map of appropriate scale (1:24,000, 1:62,500, 1:100,000, or LA - DOTD Louisiana parish map outlining the perimeter of the area). Submittal of digital data is recommended. Digital map data in vector and/or raster formats should have supporting metadata;

5. statement of facts and evidence supporting the application, pursuant to §3307, and a statement on how no action would likely impact ground water resources in the area subject to request;

6. the original published page from the official parish journal evidencing publication of Notice of Intent to apply to the Ground Water Management Commission.

B. Application by Commission. The commission may initiate a hearing to consider action with respect to a specific ground water area. The commission shall notify the public pursuant to §3303 and §3501.A prior to issuing an order. The information presented by the commission at the hearing shall include but not be limited to information pursuant to §3305.A and §3307.

C. Ground Water Emergency. Notwithstanding the provisions of Paragraphs A and B hereof, the commission may initiate action in response to an application of an interested party or upon its own motion in response to a ground water emergency. Subsequent to adoption of a proposed emergency order that shall include designation of a critical ground water area and/or adoption of a emergency management plan for an affected aquifer, the commission will promptly schedule a public hearing pursuant to §3501.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3307. Criteria for a Critical Ground Water**

#### **Designation**

A. Application for designation of a critical ground water area or potential critical ground water area must contain a statement of facts and supporting evidence substantiating that at least one of the following criteria applies to the source of ground water (aquifer) within such proposed area:

1. water levels in the source of ground water show declines that will render such source inadequate for current or immediate future demands without some action being taken; and/or

2. concentrations of chlorides, total dissolved solids (TDS) or other impurities that will render the source of ground water unsuitable for domestic use have shown annual increases that will render such source unsuitable for current or immediate future demands without some action being taken; and/or

3. overall withdrawals annually have exceeded the recharge of the source of ground water that will render the source inadequate for current or immediate future demands without some action being taken.

B. Applicant shall also submit recommendations regarding the critical ground water area including but not be limited to the following:

1. the designation of the critical ground water area boundaries; and

2. the recommended management controls of the critical ground water area, that may include but not be limited to:

a. restrictions on the amount of withdrawals by any and/or all users in accordance with R.S. 38:3099.3.D;

b. requiring new permits for the drilling of new water wells including but not limited to:

- i. spacing restrictions; and/or
- ii depth restrictions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3309. Commission Review**

A. Within 30 days of receipt of an application pursuant to §3305.A, the applicant will be notified whether or not the application is complete. If the commission determines an application is incomplete, the applicant shall be notified in writing of the reasons for that determination and the information needed to make such application complete. The commission may reject and return any application determined to be without merit or frivolous.

B. Using all available data presented to the commission, an analysis will be made by the commission to determine if the area under consideration meets the criteria to be designated a critical ground water area or could become a critical ground water area.

AUTHORITY NOTE: Promulgated in accordance with RS. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3311. Recordkeeping**

A. The commission shall compile and maintain at the Office of Conservation a record of all public documents relating to any application, hearing, or decision filed with or by the commission. The commission shall make records available for public inspection free of charge and provide copies at a reasonable cost during all normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

## **Chapter 35. Hearing**

### **§3501. Notice of Hearing**

A. Hearing Pursuant to §3305.A or §3305.B. Upon determination that an application is complete the commission shall schedule one initial public hearing at a location determined by the commission in the locality of the area affected by the application. Notice of the hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection. Such notice shall be published in the official state journal and official parish journal of each parish affected by the application at least 30 calendar days before the date of such hearing. A copy of the notice shall be sent to the applicant, any person requesting notice, and local, state and federal agencies that the commission determines may have an interest in the decision relating to the application.

B. Hearing Pursuant to §3305.C and §3505.B. The commission will notify the public of any hearing initiated by the commission either as a result of an action, pursuant to §3305.C or §3505.B, a minimum of 15 days prior to the hearing. Hearings initiated by the commission will be held in



each parish affected by the commission's action under §3305.C or §3505.B. Notice of the hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection. Such notice shall be published in the official state journal and official parish journal of each parish affected by the commission's petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### §3503. Rules of Conduct

A. Hearings scheduled pursuant to those rules will be fact finding in nature and witnesses shall not be subject to cross-examination. The chairman of the commission, or a designee, shall serve as presiding officer, and shall have the discretion to establish reasonable limits upon the time allowed for statements. The applicant shall first present all relative information supporting their proposal followed by testimony and/or evidence from local, state and federal agencies and others. All interested parties shall be permitted to appear and present testimony, either in person or by their representatives. All hearings shall be recorded verbatim. Copies of the transcript shall be available for public inspection at the Office of Conservation. The testimony and all evidence received shall be made part of the administrative record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### §3505. Decision

A Commission Decisions. After hearings held pursuant to §3501.A or §3305.C, the commission shall issue a written decision in the form of an order based on scientifically sound data gathered from the application, the participants in the public hearing, and any other relevant information. The order shall contain a statement of findings, and shall include but shall not be limited to:

1. the designation of the critical ground water area boundaries; and/or
2. the recommended management controls of the critical ground water area, that may include but not be limited to:
  - a. restrictions on the amount of withdrawals by any and/or all users in accordance with R.S. 38:3099.3.D;
  - b. requiring new permits for the drilling of new water wells including but not limited to:
    - i. spacing restrictions; and/or
    - ii. depth restrictions.

B. The commission will make the order and proposed management controls available to the applicant, participants in the original application hearing and any other persons requesting a copy thereof. The commission in accordance with §3501.B will initiate hearings on the order and proposed management controls in each parish affected by said order and management controls.

C. Final Orders. The commission will adopt final orders and management controls after completion of §3501.B. The final orders shall be made a part of the permanent records of the commission in accordance with §3311 and shall be made available to the public upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

Karen K Gautreaux  
Chairperson

0204#015

## DECLARATION OF EMERGENCY

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

Home and Community Based Services  
Waiver ProgramCChildren's Choice

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts the following Emergency Rule under the Administrative Procedure Act, R.S. 49:950 et seq. The Emergency Rule 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 Community Supports and Services adopted a rule implementing a new Home and Community Based Services waiver called Children's Choice which was designed to provide an alternative to the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver (Louisiana Register, Volume 26, Number 12). Children's Choice provides supplemental services, limited to \$7,500 per year per child for waiver services, to children with developmental disabilities who live with their families. Waiver recipients also receive all medical services covered by medicaid, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. Families of children whose names are on the MR/DD Waiver request for services registry (formally known as the MR/DD Waiver waiting list) may choose to either apply for Children's Choice or have the child remain on the MR/DD registry.

The department subsequently adopted provisions for additional supports outside of the \$7,500 limit on waiver service expenditures should certain catastrophic events occur after a child has been found eligible for Children's Choice (Louisiana Register, Volume 27, Number 7). The Bureau now proposes to amend the December 20, 2000 rule to increase the service cap for Children's Choice services to \$15,000 per individual per plan of care year. This action is being taken to provide needed services and to secure additional federal funding. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$891,250 for state fiscal year 2001-2002.

#### Emergency Rule

Effective April 21, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends the December 20, 2000 Rule and increases the service cap for Children's Choice services to \$15,000 per individual per plan of care year.

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

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

David W. Hood  
Secretary

0204#056

**DECLARATION OF EMERGENCY**

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

CommunityCARE ProgramCPhysician  
ServicesCReimbursement Increase

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 Administrative Procedure Act, R.S. 49:953.B.1 et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implemented a primary care case management (PCCM) program called CommunityCARE in designated parishes of the state to provide access to health care for eligible medicaid recipients, particularly those residing in rural communities. The CommunityCARE Program provides medicaid recipients in the designated parishes with a primary care physician, osteopath, or family doctor to serve as their primary care provider (*Louisiana Register*, Volume 19, Number 5). Recipients are given the opportunity to select a participating doctor, federally qualified health center (FQHC), or rural health clinic in their parish of residence or in a contiguous parish to be their primary care provider. The May 20, 1993 rule was subsequently amended to remove the prior authorization requirement for emergency medical services when appropriate medical screening determines that an emergency medical condition exists (*Louisiana Register*, Volume 25, Number 4) and to establish criteria for changing primary care physicians (*Louisiana Register*, Volume 27, Number 4).

The Department has determined that it is necessary to expand the CommunityCARE Program into a statewide program. In order to facilitate provider participation, the Bureau proposes to increase the reimbursement rate for certain designated Physicians= Current Procedural Terminology (CPT) procedure codes related to primary care services. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the CommunityCARE Program and

recipient access to providers of primary medical services. It is estimated that implementation of this emergency rule will increase expenditures in the Medicaid Program by approximately \$538,389 for state fiscal year 2001-2002.

**Emergency Rule**

Effective for dates of service on or after April 1, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement rates for certain designated Physicians= Current Procedural Terminology (CPT) procedure codes related to primary medical services rendered to CommunityCare recipients by providers enrolled in the CommunityCARE Program.

Reimbursement for the following CPT-4 evaluation and management procedure codes is increased to 70 percent of the 2002 Medicare allowable fee schedule. The increase shall apply only to services provided by enrolled CommunityCARE providers to CommunityCARE recipients.

CPT-4 Code	Description
99201	Office, New Patient, Straightforward
99202	Office New Patient, Expanded, Straightforward
99203	Office New Patient, Detailed, Low Complexity
99204	Office New Patient, Comp, Moderate Complexity
99205	Office New Patient, Comp, High Complexity
99211	Office Established Patient, Minimal Problems
99214	Office Est Patient, Detailed, Mod Complexity
99215	Office Est Patient, Comp, High Complexity
99218	Initial Observation Care, Straightforward, Low Complexity
99219	Initial Observation Care, Comprehensive, Moderate Complexity
99220	Initial Observation Care, Comprehensive, High Complexity
99221	Initial Hospital Comprehensive, Straightforward, Low Complexity
99222	Initial Hospital Comprehensive, Moderate Complexity
99223	Initial Hospital Comprehensive, High Complexity
99232	Subsequent Hospital, Expanded, Moderate Complexity
99233	Subsequent Hospital, Detailed, High Complexity
99238	Hospital Discharge Management
99283	Emergency Room Visit, Expanded, Low Complexity
99284	Emergency Room Visit, Detailed, Moderate Complexity
99285	Emergency Room Visit, Comprehensive, High Complexity
99342	Home, New Patient, Expanded, Moderate Complexity
99343	Home , New Patient, Detailed, High Complexity
99344	Home, New Patient
99345	Home, New Patient
99347	Home Visit, Established Patient
99348	Home Visit, Established Patient
99349	Home Visit, Established Patient
99350	Home Visit, Established Patient
99432	Normal Newborn Care Other than Hospital

Reimbursement for the following CPT-4 preventative medicine procedure codes is increased to \$51. The increase shall apply only to services provided by enrolled CommunityCARE providers to CommunityCARE recipients.

CPT-4 Code	Description
99381	Initial Healthy Individual, New Patient, Infant to 1 year
99382	Initial Healthy Individual, New Patient, Early Childhood 1-4 years
99383	Initial Healthy Individual, New Patient, Late Childhood 5-11 years
99384	Initial Healthy Individual, New Patient, Adolescent 12-17 years
99385	Initial Healthy Individual, New Patient, 18-39 years
99391	Periodic Reevaluation and Management Healthy Individual, Infant
99392	Periodic Reevaluation and Management Healthy Individual, Early Childhood 1-4 years
99393	Periodic Reevaluation and Management Healthy Individual, Late Childhood 5-11 years
99394	Periodic Reevaluation and Management Healthy Individual, Adolescent 12-17 years
99395	Periodic Reevaluation and Management Healthy Individual, 18-39 years

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

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

David W. Hood  
Secretary

0204#057

**DECLARATION OF EMERGENCY**

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

Early and Periodic Screening, Diagnosis and Treatment Program  
Psychological and Behavioral Services

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 Administrative Procedure Act, R.S. 49:953.B(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides coverage for an extensive range of medical services, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services for medicaid recipients up to the age of 21. As a result of a lawsuit, the department was ordered to make available to class members with autism appropriate psychological and behavioral services. Therefore, the bureau furnished reimbursement for these psychological and

behavioral services under the EPSDT program. This action was taken to promote the health and welfare of medicaid eligible children who have a diagnosis of autism or other pervasive developmental disorders by ensuring access to psychological and behavioral services. This Emergency Rule is being adopted to continue the provisions contained in the January 1, 2002 rule.

**Emergency Rule**

Effective for dates of service on or after May 2, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses psychological and behavioral services under the Early and Periodic Screening, Diagnosis and Treatment Program for recipients who have a diagnosis of autism or other pervasive developmental disorders and are up to the age of 21.

A. Eligibility Criteria. In order to be eligible for services, a Medicaid recipient must be up to the age of 21 and meet one of the following criteria:

1. have a diagnosis of Pervasive Developmental Disorder (PDD) according to a clinically appropriate diagnostic screening tool or other assessment; or
2. have an impaired functional status that can be addressed by psychological treatment on an instrument or other assessment of individual functioning that is appropriate for individuals with developmental disabilities; or
3. engage in behaviors so disruptive or dangerous that harm to others is likely (e.g., hurts or attempts to hurt others, such as hitting, biting, throwing things at others, using or threatening to use a weapon or dangerous object). Behaviors are recurrent, not a single instance; or
4. engage in behaviors that have resulted in actual physical harm to the child himself/herself, such as bruising, lacerations or other tissue damage, or would result in physical harm if the child was not physically restrained. Behaviors are recurrent, not a single instance. Behaviors are not the result of clinically suicidal intent.

B. Services. Services provided will include:

1. necessary evaluations;
2. family education and training;
3. clinical interventions;
4. periodic follow-up;
5. linkages to emergency mental health services in crisis situations; and
6. services routinely performed by psychologists in the practice of psychology.

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

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

David W. Hood  
Secretary

0204#058

**DECLARATION OF EMERGENCY**

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

Professional Services Program  
Physician Services  
Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians' Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPC). Reimbursement for these services is a flat fee established by the bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the bureau restored a 7 percent reduction to the reimbursement rates for selected locally assigned HCPCS and specific CPT-4 procedure codes. In addition, the reimbursement fees for certain CPT-4 designated procedure codes were increased (*Louisiana Register*, Volume 27, Number 5). The Bureau now proposes to increase the reimbursement for certain designated CPT-4 procedure codes related to specialty services. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Professional Services Program and recipient access to providers of these medically necessary services. It is estimated that implementation of this emergency rule will increase expenditures in the Medicaid Program by approximately \$207,321 for state fiscal year 2001-2002.

**Emergency Rule**

Effective for dates of service on or after April 1, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases reimbursement for certain designated procedure codes related to specialty services.

Reimbursement for the following designated Physicians-Current Procedural Terminology (CPT) codes is increased to 70 percent of the 2002 Medicare allowable fee schedule.

CPT-4 Code	Description
33960	External Circulation Assist
43760	Change Gastrostomy Tube; Simple
57452	Examination of the Vagina
62270	Spinal Fluid Tap, Diagnostic
64640	Injection Treatment of Nerve
85102	Bone Marrow Biopsy

90784	Therapeutic Injection IV
93501	Right Heart Catheterization Only
93510	Left Heart Catheterization, Percutaneous
95810	Polysomnography, 4 or more
96410	Chemotherapy Administration Intravenous

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

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

David W. Hood  
Secretary

0204#059

**DECLARATION OF EMERGENCY**

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

Licensure Procedures (LAC 46:LXXXV.301 and 303)

The Louisiana Board of Veterinary Medicine has adopted the following Emergency Rule effective April 4, 2002, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B, and the Veterinary Practice Act, R.S. 37:1518 et seq., and it shall be in effect for the maximum period allowed under law or until adoption of the Rule, whichever occurs first. The proposed Emergency Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Due to imminent peril to the health, safety, and welfare of the public, the members of the Louisiana Board of Veterinary Medicine have adopted these emergency rule amendments to assist in its ability to certify the education of foreign veterinary school graduates prior to receiving licensure to practice veterinary medicine in Louisiana. The current education certification program being accepted has proven to have an extensive time duration for completion due to a backlog of applicants with the steady increase of American students attending foreign veterinary schools and returning to the United States to practice. A new program has been developed and found equivalent to the presently accepted program. Acceptance of both programs could possibly shorten the currently accepted program's completion time and allow qualified applicants to become licensed to practice veterinary medicine sooner. Participants of the new program may complete the program and be ready for licensure as early as Fall 2002. The emergency rule amendments will assist the board in ensuring there is a satisfactory number of qualified veterinarians licensed in Louisiana to provide veterinary services to the public. The emergency amendments to the rule are set forth below.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 3. Licensure Procedures**

**§301. Applications for Licensure**

A. - B.7. ...

8. Prior to licensure in Louisiana, a foreign veterinary school graduate must provide to the Board proof of successful completion of the Educational Commission for Foreign Veterinary Graduates (ECFVG) program offered through the American Veterinary Medical Association (AVMA) or the Program for the Assessment of Veterinary Education Equivalence (PAVE) program offered through the American Association of Veterinary State Boards (AAVSB).

C. - E. ...

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 8:66 (February 1982), amended LR 10:464 (June 1984), LR 16:224 (March 1990), LR 19:343 (March 1993), LR 23:964 (August 1997), LR 25:2231 (November 1999), LR 28:

**§303. Examinations**

A.1. - 3. ...

4. A candidate for examination must be:

a. ...

b. currently enrolled in or certified by the AVMA's ECFVG program or the AAVSB's PAVE program; or

A.4.c. - D. ...

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 8:66 (February 1982), amended LR 19:344 (March 1993), LR 19:1327 (October, 1993), LR 23:964 (August, 1997), LR 25:2232 (November 1999), LR 28:

Kimberly B. Barbier  
Administrative Director

0204#047

**DECLARATION OF EMERGENCY**

**Board of Examiners for the New Orleans  
and Baton Rouge Steamship Pilots**

Drug and Alcohol Policy (LAC 46:LXXVI.Chapter 2)

This commission has declared an emergency that necessitates the printing and passage of rules and regulations relative to a comprehensive drug and alcohol testing of river pilots. There is an imminent peril facing the pilotage industry wherein any river pilot under the jurisdiction of this commission who may be under the influence and effects of any drug or alcohol that may otherwise affect his/her performance that the safety and welfare of persons and property require extensive oversight. The attached proposed rules and regulations are to remain in effect for a minimum of 120 days or until promulgation of the final rules are complete, whichever occurs first. The effective date of this Emergency Rule is March 19, 2002.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part LXXVI. Pilots**

**Chapter 2. Drug and Alcohol Policy**

**§201. Purpose/Statement of Policy**

A. Due to the safety sensitive nature of the duties performed by NOBRA pilots, the Board of Examiners/ Board of Review will maintain and enforce a strict policy of zero tolerance for the use of prohibited drugs and the misuse of alcohol. Prohibited drugs will not be used, possessed, nor distributed by any NOBRA pilot, at any time, whether on duty or off duty.

B. To this end, all state commissioned NOBRA Pilots shall be subject to drug and alcohol testing as per U.S. DOT rules (49 CFR Part 40) and U.S. Coast Guard regulations (46 CFR Parts 4, 5 and 16). This testing is federally mandated and all rules for specimen collection, handling, testing, confirmation, reporting and medical review shall be adhered to at all times. Additionally, in order to maintain its policy of zero tolerance, the Board of Examiners/Board of Review hereby establishes a more stringent drug screening program, over and above the federal rules. All NOBRA pilots, apprentices and applicants shall be subject to this more stringent drug screening program, in addition to any testing required under the federal rules. As outlined below, this more stringent drug screening program shall consist of screening in the following situations: pre-employment, random, post accident, reasonable suspicion, return to duty and follow-up.

C. Any violation of this drug and alcohol policy shall be reported to the U.S. Coast Guard and shall subject the pilot to disciplinary action by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

**§203. Definitions**

A. As used in this chapter:

*Administrative Procedure Act*(APA) the Louisiana Administrative Procedure Act under R.S. 49:950, et seq.

*Alcoholic Beverage*Any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol; any substance that may otherwise impair or affect the ability of a pilot to function in any way whatsoever.

*Applicant*Any person who completes the written application supplied by the Board of Examiners to become a NOBRA Pilot.

*Apprentice*Any person duly elected by the members of the NOBRA Association, but not yet commissioned, to serve in an orientation program, as directed by the Board of Examiners.

*Board of Examiners*the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots, as established by R.S. 34:1041, et seq.

*Board of Review*the Board of Review for the New Orleans and Baton Rouge Steamship Pilots, as established by R.S. 34:1049, et seq.

*NOBRA Pilot or Pilot*Ca commissioned Mississippi River pilot for the territory established in R.S. 34:1041, et seq.

*Prescription Medication* Any medication distributed by or with the authorization of a licensed physician, as defined in R.S. 40:961(33).

*Prohibited Drug(s)* Any and all controlled dangerous substances as defined in R.S. 40:961(7); any substances which are illegal under Federal, State, or local laws; this term shall include, but is not limited to, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and/or stimulants not prescribed for current personal treatment by a licensed physician, as defined by R.S. 40:961(33).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots LR 28:

### **§205. Circumstances for Drug Testing**

A. Regular and random, unannounced urine and hair drug screening shall be done at a frequency designed to assure the Board of Examiners/Board of Review, the State, shipping clients and the general public that the NOBRA pilots are dedicated and aggressive in their enforcement of their zero tolerance policy towards prohibited drugs.

B. Additionally, the Board of Examiners/Board of Review reserves the right to require a pilot to submit to a drug screen whenever the Board of Examiners has reasonable suspicion to suspect a pilot is under the influence of a prohibited drug. Such a drug screen may be done by means of urine, hair, blood or any other type of screen chosen by the Board of Examiners/ Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

### **§207. Urine Testing**

A. Any pilot involved in an accident or incident while performing their duties as a pilot shall be subject to a urine drug screen test, as required by these rules, U.S. DOT rules and U.S. Coast Guard regulations. This urine drug screen shall consist of an expanded screening panel designed to detect various illegal drugs, and commonly abused prescription drugs, which are not detected by standard U.S. DOT screens. The expanded panel shall be determined from time to time at the discretion of the Board of Examiners/ Board of Review. The results of all drug screens taken pursuant to this paragraph shall become part of the pilot's permanent personnel file.

B. In addition to these required drug screens, all NOBRA pilots shall be subject to random urine screening by means of the expanded screening panel. This random urine screen will be at a rate of a minimum of six pilots per month. The Board of Examiners/Board of Review shall design a protocol for the random selection of the pilots to be tested. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

### **§209. Hair Testing**

A. Every NOBRA pilot shall submit to a hair drug screen on a bi-annual basis. The timing of the bi-annual hair drug screens for each pilot shall be randomly selected as per a protocol designed by the Board of Examiners/Board of

Review. Each pilot shall appear for his/her hair drug screen when notified to do so by the Board of Examiners/Board of Review. This hair screen is designed to detect various illegal drugs, and commonly abused prescription drugs, which may have been used by a pilot. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

### **§211. Split Sample/Safety Net Testing**

A. Whenever there is a positive test result, of any type, returned as to any pilot, that pilot shall be entitled to the following split sample/referee sample testing or safety net testing as is possible through the board's designated testing facilities.

B. The board shall designate, from time to time, an authorized testing facility or laboratory that is responsive and responsible to the needs of the board. Such designation may be unilaterally and exclusively changed by the board at any time for any reason. The board, after such change, shall reasonably notify all applicants, apprentices and pilots.

C. The designated testing facility or laboratory shall ensure and be responsible that all specimen collection and related procedures are properly followed and maintained.

D. The designated testing facility or laboratory shall be responsible for the safeguarding of all specimen collection facilities, equipment and samples collected.

E. The taking of samples shall be taken, witnessed and handled in accordance with the recognized community standard.

F. The designated testing facility or laboratory shall assist in ensuring that the sample will be correctly and properly transferred for testing purposes.

G. The following procedure is hereby established for the testing of a split or referee urine, blood or hair sample.

1. Upon the timely request of a pilot, a urine or blood specimen may be split or divided into approximately equal parts; one being processed for initial laboratory testing for detection of the presence of prohibited drugs or substances therein; the remaining or second part shall be identified as the split or referee sample to be processed for future testing under the following procedures. Failure to timely request the taking of a split or referee sample shall be deemed, classified and designated as a waiver of any and all rights to have a split or referee sample.

2. As to hair, upon notice that a test result has been returned or reported as positive, the pilot shall have 24 hours to notify the testing facility that the pilot requests that the referee sample be properly taken and tested. Failure of the pilot to timely notify the testing facility that the referee sample is to be tested shall be deemed, classified and designated as a waiver and forfeiture of having the referee sample tested.

3. The split or referee sample may, at the election of the pilot, be tested by an alternate testing facility or laboratory, as pre-approved by the board.

H. All test reports shall be submitted to this board in writing.

I. Reports to this board shall present documentary or demonstrative evidence acceptable in the scientific

community and be admissible in court in support of a professional opinion as to the positive findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

**§213. Effect of Positive Drug Screen/Disciplinary Action**

A. Any NOBRA pilot with a prohibited drug detected in his system will have an opportunity to explain any medical condition which may have had an effect on the test result. However, passive inhalation or atmospheric contamination are not acceptable explanations for confirmed positive drug tests.

B. Any positive drug screen shall be reported to the U.S. Coast Guard and may place the pilot's license in jeopardy. Any NOBRA pilot testing positive for a prohibited drug, or residual thereof, shall be removed from duty, pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Any NOBRA pilot who presents a positive drug screen shall be subject to disciplinary action by the Board of Examiners/Board of Review, including the recommendation of revocation or suspension of their commission by the Governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall be determined by the Board of Examiners/Board of Review on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for drug use shall do so at his/her own personal expense. In addition, the evaluation and treatment facility must be pre-approved by the Board of Examiners/Board of Review.

C. Refusing a drug screen, or any attempts at alteration or substitution of samples is considered a violation of the federal rules, as well as this policy. Any NOBRA pilot who refuses to submit to a drug screen, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results, shall be removed from duty as a pilot pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Furthermore, avoiding the directions of the Board of Examiners/Board of Review after an accident/incident which mandatorily requires a drug/alcohol screen will be considered a refusal to test and will subject the offending pilot to disciplinary action by the Board of Examiners/Board of Review.

D. In addition, if the master of a vessel refuses a pilot's services due to the alleged impairment of the pilot, the pilot shall immediately contact a member of the Board of Examiners/Board of Review to receive instructions regarding testing. The pilot shall then immediately proceed to a testing facility selected and pre-designated by the Board of Examiners/Board of Review. Failure to proceed to the testing facility in the time allowed by the Board of Examiners/Board of Review, which shall be determined at the time, but shall not exceed three hours, shall be considered a refusal to test and will subject the offending pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

**§215. Prescription Drug Use**

A. Every NOBRA pilot has a duty to ascertain whether a prescription medication, legally prescribed, will impair his/her ability to perform his/her piloting duties. If, after consultation with his/her treating physician, a pilot reasonably believes or has been informed or advised that a prescription medication may cause impairment, the pilot shall inform the Board of Examiners/Board of Review and remove himself/herself from duty until such time that his treating physician, in consultation with a physician specializing in occupational medicine, certifies that he/she may return to duty or changes the medication to one which will not impair the pilot.

B. If a drug screen indicates that a pilot has in his/her system a prescription drug which may impair his/her ability to perform their piloting duties, and the pilot has not voluntarily taken leave, the pilot shall be removed from duty, without pay, pursuant to §111.L of the Commission's rules, until such time that the Board of Examiners/Board of Review, in consultation with a physician specializing in occupational medicine, or any other medical professional, can determine that the pilot is fit to return to duty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

**§217. Alcohol Use**

A. No pilot shall consume any alcohol, of any nature whatsoever, within six hours before, or during, the performance of their piloting duties. Alcohol testing shall be conducted following any accident involving a pilot in the performance of their duties. The Board of Examiners and/or the Board of Directors may also require a pilot to submit to alcohol testing upon reasonable suspicion that a pilot is performing his duties while under the influence of alcohol.

B. Alcohol testing may occur while a pilot is on duty or for six hours prior to coming on duty. Duty, in this case, shall be defined as the time the pilot is ordered on board the vessel. Testing positive for alcohol while on duty is directly reportable to the Board of Examiners/Board of Review and is not subject to review by a Medical Review Officer, as there is never a medical reason to use any form of alcohol internally while on duty. Any pilot who requires medicines, such as cough and cold medications, which may have a small amount of alcohol, should ask their physician or pharmacist to recommend a non-alcoholic medication. While the U.S. Coast Guard prohibits alcohol use above the level of 0.04 percent BAC, the Board of Examiners reserves the right to take disciplinary action on lower alcohol levels, depending on the facts and circumstances of each particular case.

C. Any positive alcohol test shall be reported to the U.S. Coast Guard and may place the pilot's federal license in jeopardy. Any NOBRA pilot testing positive for alcohol shall be removed from duty as a pilot, pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Any NOBRA pilot with a positive alcohol test shall be subject to disciplinary action by the Board of Examiners, including recommendation of revocation or suspension of their commission by the Governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall

be determined by the Board of Examiners on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for alcohol abuse shall do so at his own personal expense. In addition, the evaluation and treatment facility must be approved by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

### **§219. Confidentiality**

A. The results of all positive drug screens and alcohol tests shall be confidential and shall not be disclosed to any entity or person other than:

1. the Governor of Louisiana and the Board of Directors of the New Orleans/Baton Rouge Steamship Pilots Association; and

2. the U.S. Coast Guard; and

3. in the event that the Board of Examiners/Board of Review determines that a hearing is required pursuant to R.S. 34:1042, there shall be no requirement of confidentiality in conducting the hearing.

B. In addition, the records of any pilot maintained by the Board of Directors of NOBRA shall not be confidential and shall be available to the Board of Examiners/Board of Review in connection with any investigation regarding the use of prohibited drugs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

### **§221. Severability**

A. It is understood that any provision and/or requirement herein that is deemed invalid and unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

### **§223. Applicable Procedures**

A. Any investigation, action or disciplinary proceeding undertaken in conjunction with this policy shall be conducted in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq. At such time as the Board of Examiners promulgates its own investigatory and procedural rules, pursuant to R.S. 49:953, those rules shall supersede those of the Louisiana Administrative Procedure Act and become applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

Robert A. Barnett  
Executive Director

0204#014

## **EMERGENCY RULE**

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

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

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

This declaration of emergency shall become effective April 30, 2002, and shall remain in effect for the maximum period allowed under the Administrative Act or until adoption of the final Rule, whichever occurs first.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

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

#### **Chapter 7. Experimental Fisheries Programs**

#### **§701. Permits**

A. - B.9. ...

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

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

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

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

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



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

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

C. - D.8. ...

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

a. Closed Seasons, Times and Areas

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

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

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

b. Commercial Taking

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

ii. An experimental seine is a seine with a mesh size not less than 1 inches bar and 2 inches stretched and not more than 2 inches bar and 4 inches stretched, not exceeding 1,200 feet in length. The experimental seine may not be constructed of monofilament.

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

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

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

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

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

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

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

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

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

d. Permits

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

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

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

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

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

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

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

a. Closed Seasons, Times and Areas

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

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

iii. Experimental gill net shall not be used in areas closed to gill netting.

b. Commercial Taking

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

ii. An experimental gill net is a gill net with a mesh size not less than 1 inch bar and 2 inches stretched and not more than 2 inches bar and 4 inches stretched, not exceeding 1,200 feet in length.

iii. Only "strike" gill net fishing will be permitted; this means the school of fish to be taken must be visible from the surface and the gill net then placed in or directly near the selected school. Once deployed, the experimental gill net is to remain stationary until being run (gill net remains in place while fish are removed) or gill net is retrieved (gill net remains in place until lifted into boat).

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

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

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

vii. Net shall not be left unattended as defined in Title 56.

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

ix. The permitted gear shall only be fished in Lac des Allemands. Streams, bayous, canals and other connecting waterbodies are not included in this permit.

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

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

d. Permits

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

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

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

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

v. The permitted gear must be properly licensed as a freshwater gill net.

e. General Provisions. Effective with the closure of the season for using the experimental gill net permit for shad and skipjack, the possession of the experimental gill net on the waters of the state shall be prohibited. Nothing shall prohibit the possession, sale, barter or exchange off the water of shad and skipjack legally taken during any open

period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

11. Experimental Freshwater River Shrimp (*Macrobrachium ohione*) Permit

a. May experimentally fish a wire mesh shrimp net, 1/4 inch bar, 6 feet in length in the Intercoastal Canal and Mississippi River within 1.5 miles of the boat ramp adjacent to the locks in Port Allen.

b. Only freshwater river shrimp may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permittee.

c. The permittee shall have the permit in possession at all times when using permitted gear; permittee shall be on board permitted vessel when operating under conditions of permit.

d. The permitted gear must be properly licensed as a Shrimp Trawl and may be fished in freshwater areas only.

e. Permitted gear must be marked using a 1 gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number should be legibly displayed on the jug.

f. This permit may be canceled at any time if in the judgment of the secretary or his designee, the permit is being used for purposes other than that for which the permit was issued.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:571.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 12:119 (February 1986), amended LR 12:847 (December 1986), amended by the Office of Fisheries, LR 15:1098 (December 1989), amended by the Wildlife and Fisheries Commission, LR 28:

James H. Jenkins, Jr.  
Secretary

0204#023

# Rules

## RULE

### Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification  
of School PersonnelC Out-of-State Applicant  
Certification Policy (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903. The policy includes language relative to Louisiana licensing of an individual who has been prepared as a teacher in another state and/or who is certified in another state. This policy reflects two changes from prior out of state licensure policy: (1) the term of the provisional certificate that allows time for the candidate to satisfy Louisiana PRAXIS examination requirements has been extended from one year to three years; and (2) under specified conditions, a teacher who is licensed in another state and has at least four years of successful experience can be exempted from Louisiana PRAXIS examination requirements. The changes in state policy stem directly from changes in law (HB 221).

#### Title 28

#### EDUCATION

#### Part I. Board of Elementary and Secondary Education

#### Chapter 9. Bulletins, Regulations, and State Plans

#### Subchapter A. Bulletins and Regulations

#### §903. Teacher Certification Standards and Regulations

Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825-827 (June 2001), LR 27:827-828 (June 2001), LR 27:828-829 (June 2001), LR 28:759 (April 2002).

#### Out-of-State Applicant

Certification is authorized only for classroom teachers for levels or subjects available in Louisiana. These regulations shall not apply to administrative, supervisory, or special services requiring a minimum of a master's degree. A teacher who qualifies for a certificate under the out-of-state plan shall be issued either a Type C certificate or (if lacking any of the testing requirements) a three-year nonrenewable provisional certificate.

Individuals qualifying under this plan shall meet requirements 1 (A or B), either 2 or 3, and 4 under the following provisions:

I. The applicant must meet the requirements specified under A or B, below:

#### A. Approved Program Plan

1. The applicant must possess an earned baccalaureate degree from a regionally accredited institution.

2. The applicant shall have completed a teacher education program at an institution that is accredited at the time of graduation by both the state and regional accrediting agencies.

3. The applicant shall have been issued a regular certificate by the state where he completed the teacher education curriculum. If a certificate was not issued, a letter from the State Department of Education verifying eligibility for a certificate in the area(s) is acceptable.

- or -

#### B. Certificate Plan

1. The applicant must possess an earned baccalaureate degree from a regionally accredited institution.

2. The applicant shall have been issued a regular teaching certificate by another state. If a certificate was not issued, a letter from the State Department of Education verifying eligibility for a certificate in the area(s) is acceptable.

3. The applicant shall have completed student teaching or internship in the area(s) of certification or have three years of successful teaching experience in the area(s) of certification.

II. The PRAXIS/National Teacher Examinations are required, except as listed in Paragraph 3 below. The applicant must present the appropriate scores on the NTE core battery or common exams or the corresponding PRAXIS tests: Pre-Professional Skills Tests (PPSTs) in Reading, Writing, and Mathematics; and the Principles of Learning and Teaching (PLT) K-6, 5-9, or 7-12; and the specialty area exam in the area in which the teacher education program was completed or the area in which the initial certificate was issued. If there is no specialty area exam score indicated on the Louisiana list of PRAXIS/NTE area scores, only the core battery or common exams of PPSTs and PLT will be required. *The applicant lacking the PRAXIS/NTE may be issued a three-year nonrenewable provisional certificate upon request.*

III. The applicant who holds a valid out-of-state teaching certificate, has at least four years of successful teaching experience in another state as certified by the previous out-of-state school district(s) from satisfactory annual evaluation results, and has completed one year of employment as a teacher in the Louisiana public school system shall not be required to take required Louisiana PRAXIS/NTE examinations or to submit examination scores from any examination previously taken in another state as a prerequisite to the granting of certification in Louisiana, provided that:

A. the teacher meets all other requirements for a Louisiana certificate as may be required by law or board policy;

B. the local superintendent or his designee of the public school system employing the teacher has recommended the teacher for employment for the following school year, subject to the receipt of a valid Louisiana teaching certificate; and

C. the local superintendent or his designee has requested that the teacher be granted a valid Louisiana teaching certificate.

IV. The applicant who has earned a degree five or more years prior to the date of application must have taught as a regular teacher at least one semester within the five-year period immediately preceding the date of application or first employment in Louisiana. Lacking this experience, he shall be required to earn six semester hours in resident, correspondence, and/or extension credits related to his teaching field. These refresher credits must be earned during the five-year period immediately preceding the date of application.

The Louisiana certificate issued shall cover the elementary, secondary, or special education level, depending upon the level of preparation. For the secondary level of teaching, the Louisiana certificate shall cover only major and minor subjects of preparation.

For the required application form, the applicant should consult the Louisiana Department of Education website ([www.doe.state.la.us](http://www.doe.state.la.us)) or write to Certification and Higher Education, State Department of Education, P.O. Box 94064, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

0204#006

## RULE

### Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Practitioner Teacher Program (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903. The Practitioner Teacher Program provides a streamlined alternate certification option that allows individuals to become certified with a Type B certificate after three years of full-time teaching and combined coursework, if they demonstrate required content knowledge, instructional expertise, and classroom management skills. Practitioner teachers who complete the required course requirements (or equivalent contact hours) and demonstrate proficiency during their first year of teaching can obtain a Level B Professional License after successfully completing all requirements of the Practitioner Teacher Program (which includes successful completion of the Louisiana Assistance and Assessment Program and passing scores on the PRAXIS) and completing a total of three years of teaching. An exemption from the assessment portion of the Louisiana Teacher Assistance and Assessment Program is provided under specified conditions.

## Title 28 EDUCATION

### Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations

#### §903. Teacher Certification Standards and Regulations

##### A. Bulletin 746

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825-827 (June 2001), LR 27:827-828 (June 2001), LR 27:828-829 (June 2001), LR 28:760 (April 2002).

#### Practitioner Teacher Program

A. Major Components of the Practitioner Teacher Program

1. Universities, school districts, or private providers (e.g., Teach for America) will be able to offer a Practitioner Teacher Program.

2. Individuals will be considered for admission to a Practitioner Teacher Program if they possess a baccalaureate degree from a regionally-accredited university with a 2.5 or higher GPA\* and already possess the content knowledge to teach the subject area(s). To demonstrate knowledge of subject area(s), all individuals (with the exception of those who already possess a graduate degree) will be required to pass the Pre-Professional Skills Test (e.g., reading, writing, and mathematics) for the PRAXIS. Teachers of grades 1-6 (regular and special education) must pass the *Elementary Education Content Knowledge* specialty examination on the PRAXIS (#0014), and teachers of grades 4-8 (regular and special education) must pass the *Middle School Content Knowledge* specialty examination (#0146). Teachers of grades 7-12 (regular and special education) must pass the *specialty examination* on the PRAXIS in the content area(s) (e.g., English, Mathematics, Science, Social Studies, etc.) in which they intend to be certified. (\*Appropriate, successful work experience can be substituted for the required GPA, at the discretion of the program provider.)

3. If admitted to the Practitioner Teacher Program, individuals who intend to be certified to teach grades 1-6, 4-8, or 7-12 must successfully complete nine credit hours (or 135 contact hours) of instruction during the summer prior to the first year of teaching. Practitioner teachers will be exposed to teaching experiences in field-based schools while involved in course work.

4. All practitioner teachers will teach during the regular school year in the area(s) in which they are pursuing certification and participate in nine credit hours (or 135 contact hours) of seminars and supervised internship during the fall and spring to address their immediate needs. Practitioner teachers will be observed and provided feedback about their teaching from the program provider. In addition, practitioner teachers will be supported by school-based mentors from the Louisiana Assistance and Assessment Program and by principals.

5. Practitioner teachers who complete the required course requirements (or equivalent contact hours) with a 2.5 or higher GPA and demonstrate *proficiency* during their first year of teaching can obtain a Level B Professional License after successfully completing all requirements for the Practitioner Teacher Program (which includes successful completion of the Louisiana Assistance and Assessment Program and passing scores on the PRAXIS) and after completing a total of three years of teaching.

6. Practitioner teachers who successfully complete the required courses (or equivalent contact hours) and demonstrate *weaknesses* during their first year of teaching will be required to complete from one to twelve additional credit hours/equivalent contact hours. A team composed of the program provider, school principal, mentor teacher, and practitioner teacher will determine the types of courses and hours to be completed. The number of hours, which will be based upon the extent of the practitioner teachers' needs, must be successfully completed within the next two years. The team will also determine when the practitioner teachers should be assessed for the Louisiana Assistance and Assessment Program during the next two year time period. Additionally, for teachers who successfully completed the Louisiana Assistance and Assessment Program prior to entering the Practitioner Teacher Program, the team will determine if the Louisiana Components of Effective

Teaching are still being exhibited by the teacher at the "competent" level and, if so, allow by unanimous decision the teacher to be exempted from completing the Assessment part of the Louisiana Assistance and Assessment Program. The practitioner teachers must successfully complete all requirements for the Practitioner Teacher Program (which includes successful completion of the Louisiana Assistance and Assessment Program and passing scores on the PRAXIS in the specialty areas) and must teach for a total of three years before receiving a Level B Professional License.

7. The State's new Teacher Preparation Accountability System will be used to evaluate the effectiveness of all Practitioner Teacher Programs.

B. Structure for a Practitioner Teacher Program

**Program Providers**

Practitioner Teacher Programs may be developed and administered by

- universities;
- school districts; and
- other agencies (e.g., Teach for America, Troops for Teachers, Regional Service Centers, etc.).

The same State Teacher Preparation Accountability System will be utilized to assess the effectiveness of the Practitioner Teacher Programs provided by universities, school districts, and other agencies.

**Program Process**

Areas	Course/Contact Hours	Activities	Support
1. Admission to Program (Spring and Early Summer)		<p>Program providers will work with district personnel to identify Practitioner Teacher Program candidates who will be employed by districts during the fall and spring.</p> <p>To be admitted, individuals must</p> <ol style="list-style-type: none"> <li>a. possess a baccalaureate degree from a regionally accredited university.</li> <li>b. have a 2.5 GPA on undergraduate work. (*Appropriate, successful work experience can be substituted for the required GPA, at the discretion of the program provider.)</li> <li>c. pass the Pre-Professional Skills Test (e.g., reading, writing, and mathematics) on the PRAXIS. (Individuals who already possess a graduate degree will be exempted from this requirement.)</li> <li>d. pass the content specific examinations for the PRAXIS:               <ol style="list-style-type: none"> <li>(1) Practitioner candidates for Grades 1-6 (regular and special education): Pass the <i>Elementary Education Content Knowledge (#0014)</i> examination;</li> <li>(2) Practitioner candidates for Grades 4-8 (regular and special education): Pass the <i>Middle School Content Knowledge</i> examination (#0146);</li> <li>(3) Practitioner candidates for Grades 7-12 (regular and special education): Pass the <i>content specialty examination(s)</i> (e.g., English, Mathematics, etc.) on the PRAXIS in the content area(s) in which they intend to teach.</li> </ol> </li> <li>e. meet other non-course requirements established by the program providers.</li> </ol>	

Areas	Course/Contact Hours	Activities	Support
2. Teaching Preparation (Summer)	9 credit hours or 135 equivalent contact hours (5-8 weeks)	All teachers will participate in field-based experiences in school settings while completing the summer courses (or equivalent contact hours). Grades 1-6, 48, and 7-12 practitioner teachers will successfully complete courses (or equivalent contact hours) pertaining to child/adolescent development/psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching internships. Mild/moderate special education teachers will successfully complete courses (or equivalent contact hours) that focus upon the special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods/materials for mild/moderate exceptional children, and vocational and transition services for students with disabilities.	Program Providers
3. Teaching Internship and First Year Support (Fall and Spring)	9 credit hours or 135 equivalent contact hours throughout the year. (Note: No fewer than 45 contact hours should occur during the fall.)	Practitioner teachers will assume full-time teaching positions in districts. During the school year, these individuals will participate in two seminars (one seminar during the fall and one seminar during the spring) that address immediate needs of the Practitioner Teacher Program teachers and will receive one-on-one supervision through an internship provided by the program providers. The practitioner teacher will also receive support from school-based mentor teachers (provided by the Louisiana Teacher Assistance and Assessment Program) and principals.	Program Providers, Principals and Mentors
4. Teaching Performance Review (End of First Year)		Program providers, principals, mentors, and practitioner teachers will form teams to review the first year teaching performance of practitioner teachers and to determine the extent to which the practitioner teachers have demonstrated teaching proficiency. If practitioner teachers demonstrate proficiency, they will enter into the assessment portion of the Louisiana Teacher Assistance and Assessment Program during the next fall. (If a practitioner teacher who passed the assessment portion of the Louisiana Teacher Assistance and Assessment Program prior to entering the Practitioner Teacher Program continues to demonstrate the Louisiana Components of Effective Teaching at the "competent" level, the team may, by unanimous decision, exempt the teacher from completing the Assessment part of the Louisiana Assistance and Assessment Program.) If weaknesses are cited, the teams will identify additional types of instruction needed to address the areas of need. Prescriptive plans that require from one to twelve credit hours (or 1-180 equivalent contact hours) of instruction will be developed for practitioner teachers. In addition, the teams will determine whether the practitioner teachers should participate in the new teacher assessment during the fall or whether the practitioner teachers should receive additional mentor support and be assessed after the fall.	
5. Prescriptive Plan Implementation (Second Year)	1-12 credit hours (or 15-180 equivalent hours)	Practitioner teachers who demonstrate areas of need will complete prescriptive plans.	Program Providers
6. Louisiana Assessment Program (Second Year)		Practitioner teachers will be assessed during the fall or later depending upon their teaching proficiencies.	Program Providers
7. Praxis Review (Second Year)		Program providers will offer review sessions to prepare practitioner teachers to pass remaining components of the PRAXIS.	Program Providers
8. Certification Requirements (Requirements must be met within a three-year time period. A practitioner teacher's license will not be renewed if all course requirements are not met within these three years.)		<p>Program providers will submit signed statements to the Louisiana Department of Education to indicate that the practitioner teachers completed Practitioner Teacher Programs and met the following requirements within a three-year time period:</p> <ol style="list-style-type: none"> <li>1. passed the PPST components of the PRAXIS. <i>(Note: This test was required for admission.)</i></li> <li>2. completed the Teaching Preparation and Teaching Internship segments of the program with a 2.5 or higher GPA.</li> <li>3. passed the Louisiana Teacher Assistance and Assessment Program.</li> <li>4. completed prescriptive plans (if weaknesses were demonstrated).</li> <li>5. passed the specialty examination (PRAXIS) for their area(s) of certification. <ol style="list-style-type: none"> <li>a. Grades 1-6: <i>Elementary Education Content Knowledge Examination #0014 (Note: This test was required for admission)</i></li> <li>b. Grades 4-8: <i>Middle School Content Knowledge Exam #0146 (Note: This test was required for admission.)</i></li> <li>c. Grades 7-12: <i>Specialty content test in areas to be certified. (Note: This test was required for admission.)</i></li> <li>d. Mild/Moderate Special Education 1-12: <i>Special Education (to be determined)</i></li> </ol> </li> <li>6. passed the <i>Principals of Learning and Teaching</i> examination (PRAXIS) <ol style="list-style-type: none"> <li>a. Grades 1-6: <i>Principles of Learning and Teaching;</i></li> <li>b. Grades 5-9: <i>Principles of Learning and Teaching;</i></li> <li>c. Grades 7-12: <i>Principles of Learning and Teaching.</i></li> </ol> </li> </ol>	

Areas	Course/Contact Hours	Activities	Support
9. Ongoing Support (Second and Third Year)		Program providers will provide support services to practitioner teachers during their second and third years of teaching. Types of support may include on-line support, Internet resources, special seminars, etc.	Program Providers
10. Professional License (Practitioner License to Type B)		Practitioner teachers will be issued a Practitioner License when they enter the program. They will be issued a Type C Professional License once they have successfully completed all requirements of the program; after three years of teaching they will be eligible for a Type B license.	

**Undergraduate/Graduate Courses and Graduate Programs**

Universities may offer the courses at undergraduate or graduate levels. Efforts should be made to allow students to use graduate hours as electives if the students are pursuing a graduate degree.

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Weegie Peabody  
Executive Director

0204#007

**RULE**

**Board of Elementary and Secondary Education**

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

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903. To address the new certification structure that becomes effective in 2002, this policy provides required scores on exams that will serve as admission and exit

requirements for teacher certification programs. Two of the added examinations specifically address middle school (grades 4-8), a new certification category. This policy adopts the required scores on three PRAXIS examinations which have been added to the list of NTE/PRAXIS examinations required for teacher certification, as follows: #0014C Elementary Education: Content Knowledge, with a passing score of 147, #0146—Middle School: Content Knowledge, with a passing score of 150; and #0523—Principles of Learning and Teaching 59, with a passing score of 154.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 9. Bulletins, Regulations, and State Plans  
Subchapter A. Bulletins and Regulations  
§903. Teacher Certification Standards and Regulations  
A. Bulletin 746**

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

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825-827 (June 2001), LR 27:827-828 (June 2001), LR 27:828-829 (June 2001), LR 28:763 (April 2002).

**PRAXIS/NTE Scores**

Minimum Score Requirements for Certification in Louisiana, Effective 9/1/99  
(See next page for NTE tests/scores required for Louisiana certification prior to 9/1/99)<sup>1</sup>

Area Test	Area Score	Pre-Professional Skills Test			Principles of Learning & Teaching			
		PPST:R <sup>2</sup>	PPST:W <sup>2</sup>	PPST:M <sup>2</sup>	PLT K-6	PLT 5-9 <sup>3</sup>	OR	PLT 7-12
Administration and Supervision (0410)	620	---	---	---	---	---		---
Agriculture <sup>3</sup>	---	172	171	170	---	---		161
Art Education <sup>3</sup>	---	172	171	170	161	154	or	161
Biology & General Science (0030)	580	172	171	170	---	---		161
Business Education (0100)	540	172	171	170	---	---		161
Chemistry/Physics/Gen. Science (0070)	530	172	171	170				161
Early Childhood Education (0020)	510	172	171	170	161	---		---
Elementary Education: Curriculum, Instruction, & Assessment (0011)	156	172	171	170	161	---		---
Content Area Exercises (0012)	137							
Elementary Education: Content Knowledge (0014) <sup>4</sup>	147	172	171	170	161	---		---
Middle School: Content: Knowledge (0146) <sup>4</sup>	150	172	171	170	---	154		---
English Language, Literature, & Composition: Content Knowledge (0041)	160	172	171	170	---	---		161
Pedagogy (0043)	130							
French (0170)	520	172	171	170	---	---		161
German (0180)	500	172	171	170	---	---		161
Home Economics Education (0120)	510	172	171	170	---	---		161
Industrial Arts Education <sup>3</sup>	---	172	171	170	---	---		161
Mathematics (0060)	550	172	171	170	---	---		161
Music Education (0110)	530	172	171	170	161	154	or	161
Physical Education (0090)	550	172	171	170	161	154	or	161
Social Studies: Content Knowledge (0081)	149	172	171	170	---	---		161
Interpretation of Materials (0083)	152							
Spanish (0190)	540	172	171	170	---	---		161
Special Education <sup>3</sup>	---	172	171	170	161	154	or	161
Speech Communications <sup>3</sup>	---	172	171	170	---	---		161

<sup>1</sup> Individuals who achieved the required NTE score(s) may use those in lieu of the replacement PRAXIS test.

<sup>2</sup> Computer-Based Tests are available as an option.

<sup>3</sup> Area test is not required for certification in Louisiana.

<sup>4</sup> Exam approved 1025//01.

PPST:R <sup>2</sup> – Pre-Professional Skills Test: Reading (0710) PPST:W <sup>2</sup> – Pre-Professional Skills Test: Writing (0720) PPST:M <sup>2</sup> – Pre-Professional Skills Test: Mathematics (0730) PLT K-6 – Principles of Learning & Teaching K-6 (0522) PLT 5-9 <sup>4</sup> – Principles of Learning & Teaching 5-9 (0523) PLT 7-12 – Principals of Learning & Teaching 7-12 (0524)
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Computer-Based Tests:	
CBT Reading (0711)	319
CBT Writing (0721)	316
CBT Mathematics (0731)	315

All newly-adopted Praxis scores used for certification must be sent directly from ETS to the State Department of Education, either through tape transmission or hard copy score reports, effective September 1, 1999.



**NTE SCORES**

NTE Minimum Score Requirements for Certification in  
Louisiana  
Prior to September 1, 1999

Area Test	Area Score	Core Battery Test CS GK PK		
Administration and Supervision (0410)	620	---	---	---
Agriculture*	---	645	644	645
Art Education*	---	645	644	645
Biology & General Science (0030)	580	645	644	645
Business Education (0100)	540	645	644	645
Chemistry/Physics/General Science (0070)	530	645	644	645
Early Childhood Education (0020)	510	645	644	645
Education in Elementary School (0010)	550	645	644	645
English Language/Literature (0040)	550	645	644	645
French (0170)	520	645	644	645
German (0180)	500	645	644	645
Home Economics Education (0120)	510	645	644	645
Industrial Arts Education*	---	645	644	645
Mathematics (0060)	550	645	644	645
Music Education (0110)	530	645	644	645
Physical Education (0090)	550	645	644	645
Social Studies (0080)	550	645	644	645
Spanish (0190)	540	645	644	645
Special Education *	---	645	644	645
Speech*	---	645	644	645

\*Area test is not required for certification in Louisiana.  
CS = Core Battery: Communication Skills (0500)  
GK = Core Battery: General Knowledge (0510)  
PK = Core Battery: Professional Knowledge (0520)

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Weegie Peabody  
Executive Director

0204#008

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Supervisor of Student Teaching (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903. This Bulletin 746 policy removes the necessity for formally adding a certification endorsement for "Supervisor of Student Teaching." Instead, a teacher can qualify to act as a supervisor of student teaching under one of three conditions: (1) a valid Type A Louisiana certificate in the field of supervisory assignment; (2) a valid Type B Louisiana certification in the field of the supervisory

assignment and successful completion of a three-credit-hour course in the supervision of student teaching; or (3) a valid Type B Louisiana certificate in the field of the supervisory assignment and successful completion of assessor training through the Louisiana Teacher Assistance and Assessment Program. This action will allow Louisiana teacher education programs more flexibility in assigning student teachers to a qualified supervisor in the field.

**Title 28**

**EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 9. Bulletins, Regulations, and State Plans**

**Subchapter A. Bulletins and Regulations**

**§903. Teacher Certification Standards and Regulations**

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825-827 (June 2001), LR 27:827-828 (June 2001), LR 27:828-829 (June 2001), LR 28:765 (April 2002).

**Supervisor of Student Teaching Policy**

A classroom teacher can serve as a supervisor of student teaching if he/she satisfies any one of the following conditions:

1. a valid Type A Louisiana certificate in the field of the supervisory assignment;
2. a valid Type B Louisiana certificate in the field of the supervisory assignment and successful completion of the three-credit-hour course in the supervision of student teaching; or
3. a valid Type B Louisiana certificate in the field of the supervisory assignment and successful completion of assessor training through the Louisiana Teacher Assistance and Assessment Program.

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Weegie Peabody  
Executive Director

0204#009

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 1891C Louisiana's IEP Handbook for Gifted/Talented Students (LAC 28:LV.Chapters 1-11)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted Bulletin 1891, *Louisiana's IEP Handbook for Gifted/Talented Students* (R.S. 17:1941, et seq.). The present revision is being published in codified form; hence historical notes will reflect a history, by section, from this time forward.

*Louisiana's IEP Handbook for Gifted/Talented Students* are the regulations for developing the Gifted/Talented Individualized Education Plan (IEP) for identified Gifted/Talented students in the school districts. Regulations regarding the types of IEPs, timelines, participants, school district responsibilities, and due process procedures are

included. The development of *Louisiana's IEP Handbook for Gifted/Talented Students* is the result of the adoption of *Regulations for Implementation of Children with Exceptionalities Act, Subpart B, Regulations for Gifted/Talented Students* in August 2000 which separated the regulations for the disabled from the regulations for the gifted/talented.

## **Title 28**

### **EDUCATION**

#### **Part LV. Bulletin 1891C Louisiana's IEP Handbook for Gifted/Talented Students**

##### **Chapter 1. Purpose**

###### **§101. Introduction**

A. *Louisiana's IEP Handbook for Gifted/Talented Students*, revised 2001, provides information regarding the Individualized Education Program (IEP), the basis for educational programming for G/T students in Louisiana. The handbook describes the IEP process and the legal procedures involved as mandated by Revised Statute 17:1941, et seq., and its regulations. This handbook outlines mandatory procedures. It serves as a training vehicle for interested parties in the effort to improve the quality of Gifted/Talented IEPs in Louisiana.

B. A separate IEP form described in the handbook must be used for all students identified as gifted and talented, with the exception of students, gifted and/or talented who have an identified disability.

C. Any student with a disability as identified in the *Pupil Appraisal Handbook* and identified as gifted/talented will use the IEP for students with a disability to develop his/her individualized educational program.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:766 (April 2002).

##### **Chapter 3. Types of IEPs**

###### **§301. The IEP and evaluation/re-evaluation of G/T students.**

A. The IEP process is one intertwined with the process of evaluation and re-evaluation of G/T students.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:766 (April 2002).

###### **§303. The Four Types of IEPs**

A. The INTERIM IEP may be developed for students who have been receiving special educational services in another state concurrent with the conduct of an evaluation. An interim IEP may also be developed for students out of school, to age 22, who have left a public school before obtaining a state diploma.

B. The INITIAL IEP is developed for a G/T student who has met criteria for one or more exceptionalities outlined in the *Pupil Appraisal Handbook* and who has never received special educational services, except through an interim IEP, from an approved Louisiana school/program.

C. The REVIEW IEP is reviewed and revised at least annually or more frequently to consider the appropriateness of the program, placement, and any related services needed by the student.

D. The DECLASSIFIED IEP is developed when a student's reevaluation determines the student is no longer

exceptional. This IEP allows the student to receive special educational services for up to one year.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:766 (April 2002).

##### **Chapter 5. Initial IEP Development**

###### **§501. Responsibilities**

A. A student is initially determined to be exceptional through the individual evaluation process. The responsibility for making a formal commitment of resources to ensure a free, appropriate public education (FAPE) for a student identified as exceptional rests with the local education agency (LEA) in which the student resides. Note: Louisiana Revised Statute 17:1941 et seq., clearly indicates that while the local educational agency must locate and identify all students who meet the criteria for gifted/talented, the LEA is not responsible for providing FAPE to gifted/talented students whose parents have voluntarily enrolled the student in a private school.

B. The LEA is responsible for initiating the assurance of FAPE regardless of whether the system will:

1. provide all of the service directly or through interagency agreements;
2. place the student in another system or in a nonpublic facility; or
3. refer the student to another LEA for educational purposes.

C. The responsibility for offering FAPE is met through the process of developing an initial IEP. This process includes:

1. communication between the LEA and the parents;
2. IEP meeting(s) at which parents and school personnel make joint decisions and resolve any differences about the student's needs and services;
3. a completed IEP/placement document, which describes the decisions made during the meeting(s), including special education and related services that are to be provided;
4. a formal assurance by the LEA that the services described in the document will be provided;
5. parental consent for initial placement;
6. procedural safeguards for differences that cannot be resolved mutually; and
7. initial placement and provision of services as described in the IEP/placement.

D. The LEA is required to offer FAPE to those G/T students whose ages fall between 3 and 21 years.

1. The responsibility for providing services to a G/T student continues until:

- a. the student receives a State diploma; or
- b. the student reaches his or her twenty-second birthday. (If the twenty-second birthday occurs during the course of the regular school session, the student shall be allowed to remain in school for the remainder of the school year.

2. The LEA is not responsible for providing FAPE if, after carefully documenting that the agency has offered FAPE via an IEP, the parents choose to enroll the student voluntarily elsewhere or indicate their refusal of special educational services. Documentation of these parental decisions should be kept on file.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:766 (April 2002).

### **§503. Timelines**

A. An initial evaluation is considered "completed" when the written report has been disseminated by the pupil appraisal staff to the administrator of special education programs. A LEA has a maximum of 30 calendar days after the completion of the evaluation to complete the IEP/placement document for an eligible student. During this time, two activities must take place and be documented.

1. Written Notice(s) that the LEA proposes to provide FAPE through the IEP process must be given to the parents. The notice(s) must be provided in the parents' native language or must be given using other means of communication, whenever necessary, to assure parental understanding.

2. The notice(s) must indicate the purpose, time, and location of the IEP meeting; who will be in attendance; the parents' right to take other participants to the meeting; the student's right to participate (when appropriate); and the name of the person in the LEA the parents can contact if and when they have questions or concerns.

3. The notice(s) must explain the procedural safeguards available to the parents: that they can negotiate the time and place of the IEP meeting, that they have the right to full and meaningful participation in the IEP decision-making process, that their consent is required before initial placement will be made, and that all information about the student shall be kept confidential.

4. Additionally, if the LEA has not already done so, the system must inform the parents of their right to an oral explanation of the evaluation report and of their right to an independent education evaluation (IEE) if the parents disagree with the current evaluation.

B. An IEP meeting(s) that results in a completed IEP/placement document must be held. The IEP meeting(s) should be a vehicle for communication between parents and school personnel to share formal and informal information about the student's needs, educational projections, and services that will be provided to meet the student's needs. The completed IEP/placement document is a formal record of the IEP team's decisions. The timeline for completion of the document is intended to ensure that there is no undue delay in providing a free, appropriate public education (FAPE) for the student. The document is "completed" when the form has been completed and signed by the LEA's officially designated representative.

#### **Additional Notes About Timelines**

Summer Recess. When an initial evaluation report has been completed within the 30 days prior to the summer recess or during the recess, the LEA may request, through written documentation, parental approval to delay the initial IEP meeting until the first week of the next school session. However, if the parents wish to meet during the summer recess, the LEA must ensure that the appropriate IEP team members are present.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:767 (April 2002).

### **§505. Participants**

A. At any initial IEP meeting, the following participants must be in attendance: an officially designated representative of the LEA, the student's regular education and special education teachers, the student's parent(s), and a person knowledgeable about the student's evaluation procedures and results. The student, as well as other individuals the parents and/or LEA may deem necessary, should be given the opportunity to attend. Documentation of attendance is required.

1. An officially designated representative of the LEA (ODR) is one who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of G/T students, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the LEA. The LEA may designate another LEA member of the IEP team to serve also as the agency representative, if the above criteria are satisfied. A special education teacher cannot serve as the ODR for a child's IEP if he/she is also the child's teacher. A LEA must have on file and must disseminate within the agency a policy statement naming the kinds of persons who may act as the official representative of the LEA. Representatives may include the director/supervisor of special education, principals, instructional strategists, teachers, or any other LEA employee certified to provide or supervise special educational services. A member of the student's evaluation team may serve in this capacity.

2. Parents are equal participants in the IEP process in discussing the educational and related services needs of the student and deciding which placement and other services are appropriate. As such, one or both of the student's parents should participate in the initial IEP/placement meeting(s). Other team members must rely on parents' to contribute their perspective of the student outside of school. Parental insight about the student's strengths and support needs, learning style, temperament, and ability to work in various environments is of vital importance to the team in making decisions about the student's needs and services. The concerns of the parents for enhancing the education of their child must be documented in the IEP.

NOTE 1: *Parent* is defined as a natural or adoptive parent of a child; a guardian, but not the State if the child is ward of the State; a person acting in the place of a parent of a child (such as a grandparent or stepparent with whom the child lives or a person who is legally responsible for the child's welfare); or a surrogate parent who has been appointed. A foster parent may qualify as a "parent" when the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law, and the foster parent has an ongoing, long-term parental relationship with the child; is willing to participate in making educational decisions in the child's behalf; and has no interest that would conflict with the interests of the child.

B. The LEA must take measures to ensure that parents and all other team members, including sensorially impaired and non-English-speaking participants, can understand and actively participate in discussions and decision-making. These measures (i.e., having an interpreter or translator) should be documented. Local education agencies shall further ensure that, for those parents who cannot physically attend the IEP meeting(s), every effort is made to secure parental participation. After documenting attempts to arrange

a mutually convenient time and place, several possibilities remain.

1. The meeting(s) may be conducted via telephone conference calls.

2. The IEP team may consider parental correspondence to the school regarding the student's learning environment, any notes from previous parental conferences, and any data gathered during the screening and evaluation period.

3. Visits may be made to the parents' home or place of employment to receive parental suggestions.

4. If, however, every documented attempt fails and the IEP/placement document is developed without parental participation, the parents still must give written informed consent for initial placement before any special education services may begin.

NOTE 2: When a G/T student has a legal guardian or has been assigned a surrogate parent by the LEA, that person assumes the role of the parent during the IEP process in matters dealing with special educational services. When a G/T student is emancipated, parental participation is not mandated. Additionally, if the LEA has been informed that a parent is legally prohibited from reviewing a student's records, that parent may not attend the IEP meeting(s) without permission of the legal guardian.

NOTE 3: Beginning at least one year before the student reaches the age of majority, the parents will be informed that the rights under state statute will transfer to the student.

C. An evaluation representative is a required participant at an initial IEP meeting. The person may be a member of the pupil appraisal team that performed the evaluation or any person knowledgeable about and able to interpret the evaluation data for that particular student.

D. A regular education teacher is at least one of the student's regular teachers (if the student is, or may be, participating in the regular education environment). The teacher must, to the extent appropriate, participate in the development, review, and revision of the student's IEP.

1. Thus, while a regular education teacher must be a member of the IEP team if the child is, or may be, participating in the regular education environment, the teacher need not (depending upon the child's needs and the purpose of the specific IEP team meeting) be required to participate in all decisions made as part of the meeting or to be present throughout the entire meeting or attend every meeting. For example, the regular education teacher who is a member of the IEP team must participate in discussions and decisions about how to modify the general curriculum in the regular classroom to ensure the child's involvement and progress in the general curriculum and participation in the regular education environment.

E. A special education teacher is at least one of the student's special education teachers, or when appropriate, at least one special education provider of the student.

F. The student should be given the opportunity to participate in the development of the IEP. In many cases, the student will share responsibility for goals and objectives.

1. Beginning at least one year before the student reaches the age of majority, by the student's seventeenth birthday, the student must be informed that his or her rights under state statute will transfer to him or her.

G. Other individuals may be invited, at the discretion of the parent or LEA, who have knowledge or special expertise regarding the student, including related service personnel as appropriate. The LEA also must inform the parents of the

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:767 (April 2002).

### **§507. Placement Decisions**

A. The IEP team has the responsibility for determining the special education needs and placement for a G/T student. Program decisions must be in made and written on the IEP in the following areas that form the basis for the placement:

1. the student's strengths and support needs;
2. the concerns of the parents for enhancing the education of their child;
3. the results of the initial evaluation or most recent reevaluation of the student;
4. as appropriate, the results of the student's performance on any general state or district-wide assessment program;
5. the student's present levels of educational performance;
6. in the case of a student with limited English proficiency, whose language needs relate to the student's IEP;
7. the measurable annual goals, including benchmarks or short-term objectives, related to:
  - a. meeting the student's needs that result from the student's exceptionality and progress in an accelerated and enriched curriculum;
  - b. meeting each of the student's other educational needs that result from the student's exceptionality; and
  - c. appropriate activities for the preschool-aged student;
8. a statement of related services and program modifications for school personnel that will allow the student to advance appropriately toward the annual goals;
9. the explanation of the extent, if any, to which the student will not participate with students in the regular class and extracurricular and other nonacademic activities;
10. any individual modifications and/or accommodations in the administration of State or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment as documented by an attached Section 504 Plan;

11. and the anticipated frequency, location, and duration of the special education services and modifications.

B. The IEP team, following a discussion of the student's educational needs, must choose a setting(s) in which the educational needs will be addressed. The term placement refers to the setting or class in which the student will receive special educational services.

C. Placement decisions for students whose ages are 6-21. For the location of instruction/ services, IEP team members should consider the following.

1. Where would the student attend school if he or she did not have an exceptionality?

2. Based on IEP goals and objectives or benchmarks, what the instructional setting(s) would support the achievement of these goals and objectives or benchmarks?

D. For students aged 6-21. Utilizing the above information, the IEP team should choose the most appropriate setting from the continuum below:

1. regular classroom (less than 21 percent of the day outside the regular class);

2. resource with regular classes (at least 21 percent, but no more than 60 percent of the day outside the regular class);

3. self-contained class on a regular campus (more than 60 percent of the day outside the regular class.

E. For students aged 3-5. In determining the appropriate setting for a preschool-aged student, each noted setting must be considered; but the list should not be considered a continuum of least restrictive environment. The settings for preschool-aged students, three through five years, are defined as follows.

1. Regular Preschool Placement CHead Start, Title 1, kindergarten, pre-kindergarten, child care center, Even Start, 4 year-old at-risk program, or any other program designed for children.

2. Self-Contained CA preschool class, or any other program designed for exceptional children.

F. The official designated representative shall be knowledgeable about placement considerations and shall be responsible for informing the IEP team members. The IEP team must participate in decisions made about the placement; however, the LEA has the right to select the actual school site in view of committee decisions.

NOTE: See Section 2 for the complete instructions for writing the IEP.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:768 (April 2002).

### §509. Additional Clarification

A. Although throughout Louisiana most exceptional students are served in their neighborhood schools, there are some extenuating circumstances that impact the decision to serve a student in a school other than his or her neighborhood school.

B. The following is provided as an example: A Resource Center for Gifted/Talented is a type of instructional setting, designed or located in one school, that provides instructional services to students who are gifted/talented from two or more schools and in which special education is provided by an individual certified in accordance with *Bulletin 746*; pupil/teacher ratios established in *Bulletin 1706 G/T* are

used; instructional time is not less than two and one-half hours per week.

C. In addition to the questions on the IEP and Site Determination Form, the following issues must be considered:

1. students should be placed in programs on the basis of their unique needs;

2. placement cannot be based on either a particular local education agency's special education delivery system or on the availability of related services;

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:769 (April 2002).

### §511. Related Services Decisions

A. If an identified gifted/talented student needs related services including transportation, or counseling, then the IEP should address these concerns on the IEP document.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:769 (April 2002).

### §513. Accommodations/Modifications for LEAP

#### Testing

A. G/T students shall be included in the Louisiana Educational Assessment Program with appropriate accommodations and modifications in administration. These accommodations and modifications should be incorporated in the student's educational program throughout the year. The Section 504 Plans should be attached.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:769 (April 2002).

### §515. Parental Consent

A. A LEA must obtain formal parental consent before it can initially provide a student with special education in any setting. Consent includes the following:

1. the parent and/or student has been fully informed of all relevant information in a manner that is clearly understandable to the parent and/or student; and

2. the parent and/or student formally agree/agrees in writing.

B. After the parent and/or student have/has given written consent, the IEP is in effect. The parent and/or student must be provided a completed copy of the IEP/placement document signed by the official designated representative of the LEA.

NOTE: The student's consent is needed once the student reaches the "age of majority."

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:769 (April 2002).

### §517. Parental Withholding of Consent

A. Parents may disagree with all or some part(s) of the initial program, placement, or related services proposals. The LEA and the parents should make conciliatory attempts to resolve the disputes, including making modifications to the proposed program, placement, and related services. A LEA may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the LEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:769 (April 2002).

### **§519. Mediation**

A. Mediation is an informal, voluntary process by which the parent and the LEA are given an opportunity, through the help of a trained mediator, to resolve their differences and find solutions to enhance the overall learning environment for the student. Differences may arise in the planning and implementing of programs for exceptional students. It is important for parents and LEAs to have an opportunity to present their viewpoint in a dispute.

NOTE: See Louisiana's Educational Rights of Gifted/Talented Children in Public Schools and the Mediation Services for Students with Exceptionalities brochure for more information.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:770 (April 2002).

### **§521. Due Process**

A. The parents and the LEA both have the right to an "impartial due process hearing" when disagreements arise between the parent and the LEA relative to initiating or changing the identification, evaluation, or educational placement of a student with an exceptionality. Due process hearings may be initiated by the parent or the LEA.

B. See Louisiana's Rights of Gifted/Talented Children in Public Schools and the Mediation Services for Students with Exceptionalities brochure for more information.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:770 (April 2002).

### **§523. Implementation of the IEP**

A. Implementation of the IEP means that the student begins participating in the special education placement and related services as written on the IEP/placement document. A LEA must begin providing services as stated on the IEP within 10 calendar days. The date of initiation of services shall be noted on the IEP. When meetings occur during the summer or other vacation periods, a delay may occur. When meetings to develop the initial IEP/placement document occur just prior to the summer vacation, the date of implementation of services may be delayed to the beginning of the next school year if the parent(s) agree.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:770 (April 2002).

## **Chapter 7. Review IEP Development**

### **§701. Responsibilities and Timelines**

A. A LEA is required to initiate and conduct IEP meetings periodically, but not less than annually, to review each student's IEP in order to determine whether the annual goals for the student are being achieved and to revise the IEP as appropriate. The LEA must notify parents of the review IEP meeting or the review/reevaluation IEP meeting in accordance with the same procedures as the initial IEP.

B. An additional IEP/placement review meeting is not required when a LEA elects to move the student to another school site within the agency when all of the information on the IEP remains the same and the effect of the program has not been changed.

C. The IEP team should:

1. review the student's progress toward achieving the annual goals and objectives/benchmarks;
2. review the student's progress in the general education curriculum;
3. discuss any lack of expected progress toward the annual goals and in the general education curriculum;
4. review the results of the student's performance on any State or district-wide assessment;
5. review the results of any reevaluation;
6. review information about the child provided to, or by, the parents;
7. discuss the student's anticipated needs;
8. review the student's special educational needs; for the preschool-aged child, address his or her developmental needs;
9. make updated decisions about the student's program and placement;
10. in making decisions for location of instruction/services, refer to pages 12-14 of this handbook for guidance;
11. any other concerns.

D. A review meeting must be conducted in addition to the required annual review when:

1. a student's teacher feels the student's IEP or placement is not appropriate for the student; or
2. the student's parents believe their child is not progressing satisfactorily or that there is a problem with the student's IEP; or
3. the LEA proposes any changes regarding program or placement, such as to modify, add, or delete a goal or objective; to add or delete a related service; or
4. either a parent or a public agency believes that a required component of the student's IEP should be changed; or
5. the LEA must conduct an IEP meeting if it believes that a change in the IEP may be necessary to ensure the provision of FAPE; or
6. a hearing officer orders a review of the student's IEP/placement document;
7. an out-of-district placement or referral is being proposed.

NOTE: A review IEP meeting must be conducted as part of the reevaluation process.

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

1. signatures of the team members;
2. the date of the meeting;
3. the changes made in the IEP; and
4. the dated signatures of the official designated representative of the system and the parent who authorized the change.

F. In the case in which the IEP/placement document is entirely rewritten, the date of that meeting shall become the anniversary date for the next annual review meeting.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:770 (April 2002).

### **§703. Participants**

A. The LEA must ensure there is attendance by an officially designated representative of the system, the

student's regular education and special education teachers, the parents, and the student, as appropriate. At the discretion of the parent(s) or the LEA, other individuals who have knowledge or special expertise regarding the student may attend. A representative of another LEA or approved facility may be included if a placement in or referral to another LEA is proposed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:770 (April 2002).

#### **§705. Placement Decisions**

A. The IEP team must address the placement of the student according to the same placement guidelines required for an initial IEP meeting.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:771 (April 2002).

### **Chapter 9. Declassified IEP Development**

#### **§901. Responsibilities and Timelines**

A. Following the receipt of a re-evaluation that indicates no exceptionality for a student currently enrolled in special education, the LEA has two options. The LEA may:

1. place the child in regular education after obtaining formal parental approval; or
2. recommend a declassified special education program.

B. When the declassified program is chosen, an IEP meeting must be held and conducted in accordance with all the guidelines required for a review meeting. This IEP may be in effect for up to one year.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:771 (April 2002).

#### **§903. Placement Decisions**

A. The declassified IEP provides the student with a systematic, structured program for moving into regular education. The declassified program shall include regular education in combination with special educational services. The IEP team should discuss and document on the IEP the systematic plan for the student's full integration into regular classes by the end of the specified time. This plan may be documented by indicating a decreasing range of time in special classes during the year and/or by writing goals and objectives that indicate a gradually reduced special support system for the student. Such documentation will remove the necessity to reconvene the IEP team during the year as the placement gradually changes.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:771 (April 2002).

### **Chapter 11. Interim IEP Development**

#### **§1101. Responsibilities and Timelines**

A. The interim IEP provides a basis on which the student may begin to receive special educational and related services and provides an appraisal program to gather assessment data for the individual evaluation process.

B. A student must be offered enrollment in a LEA. This enrollment process, from initial entry into the LEA to placement, shall occur within 10 school days.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:771 (April 2002).

#### **§1103. Placement Decisions**

A. Local supervisors of special education may approve enrollment in special education after existing student information has been reviewed by pupil appraisal personnel. An interim IEP would be developed and formal parental approval obtained. The interim IEP remains in effect as long as the evaluation is in process and may be revised as necessary. During this time all regulations pertaining to gifted/talented students shall apply. The interim IEP shall not exceed the duration of the evaluation.

B. Often, discussion about the current performance, goals, and objectives for the student will have to be conducted without the benefit of integrated assessment data or teacher observation.

C. To gather information about current performance, the parent may be the prime source of information about the student's skills, development, motivation, learning style, etc.

D. The goals and objectives should address the student's educational program during the assessment process.

E. When available information indicates that related services are required, services should be provided.

F. The student's performance during an interim placement must be documented by the teacher and pupil appraisal personnel. This documentation should provide meaningful data for determining an appropriate program and placement.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:771 (April 2002).

#### **§1105. Parental Consent**

A. Parental consent for the interim placement and related services must be obtained by parental signature on the IEP form.

B. Parents should be informed that the student will exit from the special educational program if the student is found to be ineligible for special educational services according to the criteria of the Pupil Appraisal Handbook.

C. If the student is eligible for special educational services, an initial IEP/placement meeting will be conducted within 30 calendar days from the date of dissemination of the written evaluation to the LEA's special education administrator.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:771 (April 2002).

Weegie Peabody  
Executive Director

0204#010

## RULE

### Student Financial Assistance Commission Office of Student Financial Assistance

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

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Scholarship/Grant rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

#### Title 28 EDUCATION

#### Part IV. Student Financial AssistanceC Higher Education Scholarship and Grant Programs

#### Chapter 3. Definitions

#### §301. Definitions

\* \* \*

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

\* \* \*

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

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

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

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

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

\* \* \*

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

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

2001), LR 28:45 (January 2002), LR 28:45 (January 2002), LR 28:772 (April 2002).

#### Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards

#### §703. Establishing Eligibility

A. ...

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

2. - 6.c. ...

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

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

B. - G.2. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), LR 27:1850 (November 2001), LR 28:772 (April 2002).

#### §705. Maintaining Eligibility

A. - A.2. ...

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

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

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

6. Minimum Academic Progress:

a. in an academic program at an Eligible College or University, by the end of each Academic Year (College), earn a total of at least 24 college credit hours as determined



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

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

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

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

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

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

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

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

10. has not received a baccalaureate degree; and

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

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999); LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26:1996, 2001 (September 2000), LR 27:1853 (November 2001), LR 28:772 (April 2002).

## Chapter 8. TOPS-TECH Award

### §803. Establishing Eligibility

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

1. be a U. S. citizen, provided however, that a student who is not a citizen of the United States but who is eligible to apply for such citizenship shall be deemed to satisfy the citizenship requirement, if within 60 days after the date the student attains the age of majority, the student applies to

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

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

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

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

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

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

or

iii. ...

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

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

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

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1904 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65, 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2754 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), LR 27:1854 (November 2001), LR 28:773 (April 2002).

### **§805. Maintaining Eligibility**

A. - A.2. ...

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

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

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

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

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

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

B. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), LR 27:1856 (November 2001), LR 28:774 (April 2002).

## **Chapter 9. TOPS Teacher Award**

### **§903. Establishing Eligibility**

A. - A.5. ...

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

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

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

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

HISTORICAL NOTE: Promulgated by Office of Student Financial Assistance, Student Financial Assistance Commission LR 24:637 (April 1998), amended LR 24:1906 (October 1998), LR 26:68 (January 2000), LR 26:2269 (October 2000), LR 27:284 (March 2001), LR 27:1220 (August 2001), repromulgated LR 27:1857 (November 2001), amended LR 28:774 (April 2002).

### **§907. Maintaining Eligibility**

A. - A.7. ...

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

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:638 (April 1998), amended LR 24:1907 (October 1998), LR 25:1092 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), repromulgated LR 27:1857 (November 2001), amended LR 28:774 (April 2002).

### **§911. Discharge of Obligation**

A. - C.1. ...

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

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

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:638 (April 1998), amended LR 24:1907 (October 1998), amended LR 26:69 (January 2000), LR 26:1603 (August 2000), LR 27:1858 (November 2001), LR 28:774 (April 2002).

## **Chapter 11. Rockefeller State Wildlife Scholarship**

### **§1103. Establishing Eligibility**

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

1. - 4. ...

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:639 (April 1998), amended LR 24:1908 (October 1998), LR

27:1220 (August 2001), repromulgated LR 27:1859 (November 2001), amended LR 28:774 (April 2002).

### **§1111. Discharge of Obligation**

A. - C.1. ...

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

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

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:640 (April 1998), amended LR 24:1909 (October 1998), repromulgated LR 27:1860 (November 2001), amended LR 28:775 (April 2002).

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

### **§1903. Responsibilities of Postsecondary Institutions**

A. - B.1. ...

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

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

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

E. - E.2. ...

3. cumulative grade point average; and

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

F. - G ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission Office of Student Financial Assistance, LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998, 2002 (September 2000), LR 27:1864 (November 2001), LR 28:775 (April 2002).

## **Chapter 21. Miscellaneous Provisions and Exceptions**

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

A. - B. ...

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

1. - 3. ...

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

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

2. - 3. ...

E. Qualifying Exceptions to the Initial and Continuous Enrollment Requirement

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

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

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

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

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

HISTORICAL NOTE: Promulgated by Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1015 (May 2000), LR 26:2002 (September 2000), LR 27:36 (January 2001), LR 27:1875 (November 2001), LR 27:1866 (November 2001), LR 28:45 (January 2002), LR 28:46 (January 2002), LR 28:775 (April 2002).

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

A. ...

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

1. Parental Leave

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

b. Certification Requirements. The recipient must submit:

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

c. Maximum length of deferment. Up to one year per child.

## 2. Physical Rehabilitation Program

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

b. Certification Requirements. The recipient must submit:

- i. a completed deferment request form including the reason for the rehabilitation, dates of absence from work, the number of days involved, and any other information or documents, and
- ii. a written statement from a qualified medical professional describing the rehabilitation, including the diagnosis, the beginning date of the rehabilitation, the required treatment, and the length of the recovery period.

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

## 3. Substance Abuse Rehabilitation Program

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

b. Certification Requirements. The recipient must submit:

- i. a completed deferment request form, the reason for the rehabilitation, dates of absence from work, the number of days involved, and any other information or documents, and
- ii. a written statement from a qualified professional describing the rehabilitation, including the diagnosis, the beginning date of the rehabilitation, the required treatment, and the length of the recovery period.

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

## 4. Temporary Disability

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

b. Certification Requirements. The recipient must submit:

- i. a completed deferment request form, the reason for the disability, dates of absence from work, the number of days involved, and any other information or documents, and
- ii. a written statement from a qualified professional of the existence and of the accident, injury, illness or required surgery, including the dates of treatment,

the treatment required, the prognosis, the length of the recovery period, the beginning and ending dates of the doctor's care, and opinions as to the impact of the disability on the recipient's ability to work; and

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

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

## 5. Religious Commitment

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

b. Certification Requirements. The recipient must submit:

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

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

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

## 6. Military Service

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

b. Certification Requirements. The recipient must submit:

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

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

iii. a certified copy of the military orders.

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

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

## 8. Recipient is:

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

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

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

## D. Procedure for Requesting a Deferment

1. The recipient should complete and submit an application for a deferment, with documentary evidence, to the Office as soon as possible after the occurrence of the event or circumstance that supports the request. The

recipient must submit the application for deferment no later than three months after the date of the notice of repayment. The deadline for filing the request shall be prominently displayed on the notice of repayment.

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

E. Conditions of Deferment

1. Deferments may be subject to the following conditions:

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

b. agreement to give notice that the condition or circumstance that warranted the deferment has ceased;

c. agreement to a repayment schedule commencing on expiration of the deferment;

d. agreement to acknowledge debt;

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

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

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

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

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

1. death of the recipient;

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

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:649 (April 1998), amended LR 24:1918 (October 1998), LR 26:1603 (August 2000), repromulgated LR 27:1868 (November 2001), amended LR 28:775 (April 2002).

**§2107. Funding and Fees**

A. - A.2. ...

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

C. - E. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:649 (April 1998), amended LR 24:1919 (October 1998), LR 26:1998 (September 2000), repromulgated LR 27:1869 (November 2001), amended LR 28:777 (April 2002).

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

**§2303. Establishing Eligibility**

A. - A.5. ...

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

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

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

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1461 (August 1999) LR 25:2177 (November 1999), LR 26:2754 (December 2000), LR 27:1220 (August 2001), repromulgated LR 27:1872 (November 2001), amended LR 28:777 (April 2002).

**§2309. Maintaining Eligibility**

A. - A.4. ...

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

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1462 (August 1999), amended LR 26:2754 (December 2000), repromulgated LR 27:1873 (November 2001), amended LR 28:777 (April 2002).

George Badge Eldredge  
General Counsel

0204#012

**RULE**

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

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

The Louisiana Tuition Trust Authority (LATTA) has amended the rules of the Student Tuition and Revenue Trust (START Savings) Program (R.S. 3091-3099.2).

**Title 28**

**EDUCATION**

**Part VI. Student Financial AssistanceC Higher  
Education Savings**

**Chapter 1. General Provisions**

**Subchapter A. Student Tuition Trust Authority**

**§107. Applicable Definitions**

\* \* \*

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

\* \* \*

*Louisiana Resident*C

1. - 4. ...

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

\*\*\*

#### *Qualified Higher Education Expenses*

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

2. room and board; and

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

\*\*\*

*Room and Board* Qualified Room and Board costs include the reasonable cost for the academic period incurred by the designated beneficiary for room and board while attending an eligible educational institution on at least a half time basis, not to exceed the maximum amount included for room and board for such period in the cost of attendance (as currently defined in §472 of the Higher Education Act of 1965, 20 U.S.C. 108711) as determined by the eligible educational institution for such period, or if greater, the actual invoice amount the student residing in housing owned or operated by the eligible education institution is charged by such institution for room and board. Room and board are only qualified higher education expenses for students who are enrolled at least half time.

\*\*\*

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

\*\*\*

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:777 (April 2002).

### **Chapter 3. Education Savings Account**

#### **§301. Education Savings Accounts**

A. - C.3. ...

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

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

b. ...

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

d. In the event of the dissolution of an account owner who is a legal entity, the beneficiary shall become the substitute account owner. If the account owner is dissolved,

the beneficiary designated to receive the refund has died, and there is no substitute beneficiary named, the refund shall be made to the beneficiary's estate.

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

D.1 - 6.c. ...

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

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

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

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

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

E. - E.2. ...

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

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

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

3. By signing the owner's agreement:

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

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

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

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

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

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

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

iv. the account owner acknowledges and agrees that once funds are deposited in a START account, neither

the deposits nor the interest earned thereon can be refunded to the account owner;

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

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

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

I. - J. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:713 (June 1997), amended LR 24:436 (March 1998), LR 24:1269 (July 1998), LR 25:1794 (October 1999), LR 26:2262 (October 2000), LR 27:1878 (November 2001), LR 28:778 (April 2002).

### §303. Account Owner Classifications

A. - B. ...

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

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 27:1879 (November 2001), amended LR 28:779 (April 2002).

### §307. Allocation of Earnings Enhancements

A. - A.2. ...

B. Providing Proof of Annual Federal Adjusted Gross Income

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

2. - 2.b. ...

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

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

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

H. - J.3. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1271 (July 1998), LR 25:1794 (October 1999), LR 26:1263 (June 2000), LR 26:2263 (October 2000), LR 27:37 (January 2001) LR 27:1222 (August 2001), LR 27:1880 (November 2001), LR 28:779 (April 2002).

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

A. - A.3. ...

B. Account Terminations

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

2. - 5. ...

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

C. - C.2. ...

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

D. Designation of a Refund Recipient

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

2. - 3. ...

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

E. - E.3. ...

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

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

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

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

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

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

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

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

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

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

G. - G.3. ...

H. Voluntary Termination of an Account after December 31, 2001

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

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

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998). Repromulgated LR 26:2265 (October 2000). Amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002).

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

A. - A.3. ...

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

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

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

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

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

B. - C.5. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR:26:2266 (October 2000), amended LR 27:1883 (November 2001), LR 28:780 (April 2002).

George Badge Eldredge  
General Counsel

0204#013

**RULE**

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

Use or Disposal of Sewage Sludge  
(LAC 33:VII.301 and IX.3101-3113)(WP034)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Solid Waste regulations, LAC 33:VII.301, and adopted the Water Quality regulations, LAC 33:IX.Chapter 23.Subchapter X (Log #WP034).

The Rule establishes standards, which consist of general and other requirements, pollutant limits, general and other management practices, and operational standards, for the final use or disposal of sewage sludge generated during the

treatment of domestic sewage in a treatment works and of domestic septage. Standards are included for sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land, or sewage sludge fired in a sewage sludge incinerator. Also included are pathogen and alternative vector attraction reduction requirements for sewage sludge, a material derived from sewage sludge, or domestic septage applied to the land. Siting, operation, and financial assurance requirements are included for commercial blenders, composters, and mixers of sewage sludge or a material derived from sewage sludge. The Rule includes the frequency of monitoring, recordkeeping requirements, and reporting requirements for Class I sludge management facilities and requirements for the person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill. The basis and rationale for this Rule are to establish regulations that will be in line with EPA regulations for the final use and disposal of sewage sludge. The adoption of this regulation will prepare the Department for future assumption of the Sewage Sludge Management Program. A benefit of assumption of the Sewage Sludge Management Program is that facilities will not be required to obtain both an EPA permit and a separate state permit for the use and disposal of sewage sludge. Upon assumption of the program, sewage sludge requirements will be a part of the LPDES permit or as a separate single LPDES general permit or, in the case of a sewage sludge incinerator, as a single air permit.

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. The only impact this proposed Rule may have on the family, as described in R.S. 49:972, is that the family budget may be affected if a municipality or private sanitary wastewater treatment system should choose to increase its sewer user fees. However, such increases directly related to the implementation of this rule should be limited to very few facilities and would be difficult to predict.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part VII. SOLID WASTE**

**Chapter 3. Scope and Mandatory Provisions of the Program**

**§301. Wastes Governed by These Regulations**

All solid wastes as defined by the act and these regulations are subject to the provisions of these regulations, except as follows:

\* \* \*

[See Prior Text in A - A.7]

8. infectious waste or other hospital or clinic wastes that are not processed or disposed of in solid waste processing or disposal facilities permitted under these regulations; and

9. sewage sludge and domestic septage as defined by LAC 33:IX.Chapter 23.Subchapter X of the Water Quality regulations will be exempt from all requirements of LAC 33:VII, except for the transportation requirements in LAC 33:VII.503, 529, and 705, upon the date of receipt by the department of sewage sludge program authority from EPA in accordance with 40 CFR Part 501 under the NPDES program. Provisions addressing sewage sludge and domestic



septage found throughout these regulations will no longer apply once the department receives program authority.

\* \* \*

[See Prior Text in B - B.6]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2515 (November 2000), LR 28:780 (April 2002).

## Part IX. Water Quality

### Chapter 23. The LPDES Program

#### Subchapter X. Standards for the Use or Disposal of

##### Sewage Sludge

#### §3101. General Provisions

##### A. Purpose and Applicability

###### 1. Purpose

a. This Subchapter establishes standards, which consist of general and other requirements, pollutant limits, general and other management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works and of domestic septage. Standards are included in this Subchapter for sewage sludge, a material derived from sewage sludge, and domestic septage that is applied to the land or sewage sludge fired in a sewage sludge incinerator. Also included in this Subchapter are pathogen and alternative vector attraction reduction requirements for sewage sludge, a material derived from sewage sludge, and domestic septage applied to the land and also the siting, operation, and financial assurance requirements for commercial blenders, composters, mixers, or preparers of sewage sludge or a material derived from sewage sludge.

b. The standards in this Subchapter include the frequency of monitoring, recordkeeping requirements, and reporting requirements for Class I sludge management facilities as defined in Subsection H of this Section.

c. This Subchapter establishes requirements for the person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill.

d. In addition, this Subchapter contains specific prohibitions and restrictions regarding the use and disposal of sewage sludge.

###### 2. Applicability

###### a. This Subchapter applies to:

- i. any person who prepares sewage sludge or a material derived from sewage sludge;
- ii. any person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land;
- iii. any person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill;
- iv. the owner/operator of a surface disposal site; and
- v. the owner/operator of a sewage sludge incinerator.

b. This Subchapter applies to sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land or placed on a surface disposal site, to the land where the sewage sludge, a material derived

from sewage sludge, or domestic septage is applied, and to a surface disposal site.

c. This Subchapter applies to sewage sludge fired in a sewage sludge incinerator, the sewage sludge incinerator, and the exit gas from a sewage sludge incinerator stack.

d. This Subchapter applies to the person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill (MSWL).

##### B. Compliance Period

1. Except as otherwise specified in this Subchapter and in Paragraph B.3 of this Section, compliance with the standards in this Subchapter shall be achieved as expeditiously as practicable, but in no case later than February 19, 1994. When compliance with the standards requires construction of new pollution control facilities, compliance with the standards shall be achieved as expeditiously as practicable, but in no case later than February 19, 1995.

2.a. The requirements for frequency of monitoring, recordkeeping, and reporting in this Subchapter for total hydrocarbons in the exit gas from a sewage sludge incinerator are effective February 19, 1994, or if compliance with the operational standard for total hydrocarbons in this Subchapter requires the construction of new pollution control facilities, February 19, 1995.

b. All other requirements for frequency of monitoring, recordkeeping, and reporting in this Subchapter are effective on July 20, 1993.

3.a. Unless otherwise specified in LAC 33:IX.3113, compliance with the requirements in LAC 33:IX.3113.B, beginning with the definition of *average daily concentration* through the definition of *wet scrubber*, 3113.D.3, 4, and 5, F.5, 6.a, 7, 8.e, and 10, and G.1.a and c shall be achieved as expeditiously as practicable, but in no case later than September 5, 2000. When new pollution control facilities must be constructed to comply with the revised requirements in LAC 33:IX.3113, compliance with the revised requirements shall be achieved as expeditiously as practicable, but no later than September 4, 2001.

b. Compliance with the requirements in Paragraphs E.2, 3, and 4 of this Section shall be achieved as expeditiously as practicable, but in no case later than 2 years from receipt of program authorization under the NPDES program.

c. Upon the effective date of these regulations, those persons who have received an exemption under LAC 33:VII for any form of use or disposal of sewage sludge will have 180 days to submit an application for permit coverage under these regulations.

##### C. Permits and Permitting Requirements

1.a. Except as exempted in Paragraph C.2 of this Section, no person shall prepare sewage sludge or a material derived from sewage sludge; apply sewage sludge, a material derived from sewage sludge, or domestic septage to the land; or own or operate a sewage sludge incinerator without first obtaining a permit that authorizes such practice in accordance with the applicable requirements of this Subchapter and LAC 33:III.Chapter 5, in the case of sewage sludge incinerators.

b. The person who prepares sewage sludge or a material derived from sewage sludge and the person who applies sewage sludge, a material derived from sewage

sludge, or domestic septage to the land shall use the application forms indicated in LAC 33:IX.2331.A.2 and furnish the information requested in LAC 33:IX.2331.Q.

c. The owner/operator of a sewage sludge incinerator shall apply for a permit issued either under Title V of the 1990 amended Clean Air Act or other appropriate air quality permit and shall use the permit application forms indicated in LAC 33:IX.2331.A.2 and furnish the information requested in LAC 33:IX.2331.Q and LAC 33:III.Chapter 5. The permit shall be in accordance with all applicable requirements of this Subchapter and other applicable requirements of LAC 33:IX.Chapter 23.

2.a. The person who applies bagged sewage sludge or a bagged material derived from sewage sludge to the land is exempt from the requirement of obtaining a permit if the person applies bagged sewage sludge or a bagged material derived from sewage sludge that is *Exceptional Quality* as defined in Subsection H of this Section.

b. The person who applies bulk sewage sludge or a bulk material derived from sewage sludge to the land is exempt from the requirement of obtaining a permit if the person applies bulk sewage sludge or a bulk material derived from sewage sludge that was obtained from a facility with an Exceptional Quality Certification under LAC 33:IX.3103.J and that person provides proof to the state administrative authority that the bulk sewage sludge or the bulk material derived from sewage sludge was obtained from a facility with an Exceptional Quality Certification.

c. The state administrative authority may exempt any other person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land from the requirement of obtaining a permit, on a case-by-case basis, after determining that human health and the environment will not be adversely affected by the application of sewage sludge, a material derived from sewage sludge, or domestic septage to the land.

D. Sewage Sludge Disposed in a Municipal Solid Waste Landfill

1. The Municipal Solid Waste Landfill where sewage sludge is disposed must possess a permit issued under LAC 33:VII or subtitle C of the Solid Waste Disposal Act.

2. The person who produces sewage sludge that is disposed in a Municipal Solid Waste Landfill shall provide the necessary information to the owner/operator of the landfill where the sewage sludge is to be disposed to assure that the landfill will be in compliance with its permit requirements.

3. The person who produces sewage sludge that is disposed in a Municipal Solid Waste Landfill shall provide proof to the state administrative authority that the sewage sludge is being disposed at an approved landfill by furnishing the name, address, and permit number of the landfill to the state administrative authority.

E. Prohibitions, Restrictions, and Additional or More Stringent Requirements

1.a. No person shall use or dispose of sewage sludge, a material derived from sewage sludge, or domestic septage through any practice for which requirements have not been established in this Subchapter.

b. No person shall use or dispose of sewage sludge, a material derived from sewage sludge, or domestic septage

except in accordance with the requirements in this Subchapter.

2. Surface disposal, as defined in Subsection H of this Section, is prohibited as a use or disposal method of sewage sludge, of a material derived from sewage sludge, or of domestic septage.

3.a. To store, or storage of, sewage sludge, as defined in Subsection H of this Section, is allowed for a period not to exceed six consecutive months when:

i. necessary for the upgrade, repair, or maintenance of a treatment works treating domestic sewage or for agricultural storage purposes when the sewage sludge is to be used for beneficial use as defined in Subsection H of this Section;

ii. notification has been made by the person who wishes to store the sewage sludge to the state administrative authority; and

iii. subsequent approval by the state administrative authority has been received.

b.i. The state administrative authority may approve the storage of sewage sludge for commercial blenders, composters, mixers, or preparers of sewage sludge or for purposes other than those listed in Subparagraph E.3.a of this Section, for a period greater than six consecutive months, if the person who stores the sewage sludge demonstrates that the storage of the sewage sludge will not adversely affect human health and the environment.

ii. The demonstration shall be in the form of an official request forwarded to the state administrative authority at least 90 days prior to the storage of the sewage sludge and shall include, but is not limited to:

(a) the name and address of the person who prepared the sewage sludge;

(b) the name and address of the person who either owns the land or leases the land where the sewage sludge is to be stored, if different from the person who prepared the sewage sludge;

(c) the location, by either street address or latitude and longitude, of the land;

(d) an explanation of why the sewage sludge needs to remain on the land;

(e) an explanation of how human health and the environment will not be affected;

(f) the approximate date when the sewage sludge will be stored on the land and the approximate length of time the sewage sludge will be stored on the land; and

(g) the final use and disposal method after the storage period has expired.

iii.(a). The state administrative authority shall make a determination as to whether or not the information submitted is complete and shall issue the determination within 30 days of having received the request. If the information is deemed incomplete, the state administrative authority will issue a notice of deficiency. The commercial blender, composter, mixer, or preparer of sewage sludge shall have 45 days, thereafter, to respond to the notice of deficiency.

(b). Within 30 days after deeming the information complete, the state administrative authority will then make and issue a determination to grant or deny the request for the storage of sewage sludge.

4.a. The use of ponds, lagoons, or landfarms is allowed for the treatment of sewage sludge or domestic septage, as defined in Subsection H of this Section, only after the applicable air, solid waste, hazardous waste, and water discharge permits have been applied for and granted by the state administrative authority.

b. The person who makes use of a pond, lagoon, or landfarm to treat sewage sludge or domestic septage shall provide documentation to the state administrative authority that indicates the final use or disposal method for the sewage sludge or domestic septage and shall apply for the appropriate permit for the chosen final use or disposal in accordance with this Subchapter.

5. The application of domestic septage to a residential lawn or garden is prohibited.

6.a. The blending, composting, or mixing of sewage sludge with feedstock or supplements containing any of the materials listed in Table 1 of LAC 33:IX.3101.E or whose hazardous waste codes are those other than D002 or D003 is prohibited.

b. The state administrative authority may prohibit the use of other materials as feedstock or supplements if the use of such materials has a potential to adversely affect human health or the environment, as determined by the administrative authority.

<b>Table 1 of LAC 33:IX.3101.E</b>	
<b>Materials Prohibited from Feedstock or Supplements that are Blended, Composted, or Mixed with Sewage Sludge</b>	
Antifreeze	Pesticides
Automotive (lead-acid) batteries	Photographic supplies
Brake fluid	Propane cylinders
Cleaners (drain, oven, toilet)	Treated wood containing the preservatives CCA and/or PCP
Gasoline and gasoline cans	Tubes and buckets of adhesives, caulking, etc.
Herbicides	Swimming pool chemicals
Household (dry cell) batteries	Unmarked containers
Oil-based paint	Used motor oil

7.a. The use of sewage sludge for daily cover at landfill facilities is prohibited.

b. The use of sewage sludge as interim and final cover for landfill facilities is allowed only if the sewage sludge meets the requirements and is used in accordance with the requirements in LAC 33:IX.3103.

8.a. On a case-by-case basis, the permitting authority may impose requirements in addition to or more stringent than the requirements in this Subchapter when necessary to protect human health and the environment from any adverse effect of a pollutant in the sewage sludge.

b. Nothing in this Subchapter precludes a local government, district, or political subdivision thereof or interstate agency from imposing additional or more stringent requirements than the requirements presented in this Subchapter.

#### F. Exclusions

1. Treatment Processes. This Subchapter does not establish requirements for processes used to treat domestic sewage or for processes used to treat sewage sludge prior to

final use or disposal, except as provided in LAC 33:IX.3111.C and D.

2. Selection of a Use or Disposal Practice. This Subchapter does not require the selection of a sewage sludge use or disposal practice. The determination of the manner in which sewage sludge is used or disposed is to be made by the person who prepares the sewage sludge.

#### 3. Co-Firing of Sewage Sludge

a. Except for the co-firing of sewage sludge with auxiliary fuel, as defined in LAC 33:IX.3113.B, this Subchapter does not establish requirements for sewage sludge co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired.

b. This Subchapter does not establish requirements for sewage sludge co-fired with auxiliary fuel if the auxiliary fuel exceeds 30 percent of the dry weight of the sewage sludge and auxiliary fuel mixture.

4. Sludge Generated at an Industrial Facility. This Subchapter does not establish requirements for the use or disposal of sludge generated at an industrial facility during the treatment of industrial wastewater, including sewage sludge generated during the treatment of industrial wastewater combined with domestic sewage.

5. Hazardous Sewage Sludge. This Subchapter does not establish requirements for the use or disposal of sewage sludge or a material derived from sewage sludge that is hazardous under 40 CFR Part 261 and/or LAC 33:V.

6. Sewage Sludge with High PCB Concentration. This Subchapter does not establish requirements for the use or disposal of sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

7. Incinerator Ash. This Subchapter does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

8. Grit and Screenings. This Subchapter does not establish requirements for the use or disposal of grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

9. Drinking Water Treatment Sludge. This Subchapter does not establish requirements for the use or disposal of sludge generated during the treatment of either surface water or groundwater used for drinking water.

10. Commercial and Industrial Septage. This Subchapter does not establish requirements for the use or disposal of commercial septage, industrial septage, a mixture of domestic septage and commercial septage, or a mixture of domestic septage and industrial septage.

11. Transporters and Haulers of Sewage Sludge or Domestic Septage. This Subchapter does not establish requirements for the transporting and hauling of sewage sludge or domestic septage. Transporters and haulers of sewage sludge or domestic septage must comply with all of the applicable requirements of LAC 33:VII pertaining to the transporting or hauling of sewage sludge or domestic septage.

#### G. Sampling and Analysis

##### 1. Sampling

a. The permittee shall collect and analyze representative samples of sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land and sewage sludge fired in a sewage sludge incinerator.

b. The permittee shall create and maintain records of sampling and monitoring information that shall include:

- i. the date, exact place, and time of sampling or measurements;
- ii. the individual(s) who performed the sampling or measurements;
- iii. the date(s) analyses were performed;
- iv. the individual(s) who performed the analysis;
- v. the analytical techniques or methods used; and
- vi. the results of such analysis.

2. Methods. The materials listed below are incorporated by reference in this Subchapter. The materials are incorporated as they exist on the date of approval, and notice of any change in these materials will be published in the *Louisiana Register*. They are available for inspection at the Office of the Federal Register, 7th Floor, Suite 700, 800 North Capitol Street, NW, Washington, DC, and at the Office of Water Docket, Room L-102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. Copies may be obtained from the standard producer or publisher listed in the regulation. Information regarding other sources of these documents is available from the Department of Environmental Quality, Office of Environmental Services, Permits Division. Methods in the materials listed below shall be used to analyze samples of sewage sludge.

a. Enteric Viruses. ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," 1992 Annual Book of ASTM Standards: Section 11C Water and Environmental Technology, ASTM, 1916 Race Street, Philadelphia, PA 19103-1187.

b. Fecal Coliform. Part 9221 E or Part 9222 D, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

c. Helminth Ova. Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB 88-154273/AS).

d. Inorganic Pollutants. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Second Edition (1982) with Updates I (April 1984) and II (April 1985) and Third Edition (November 1986) with Revision I (December 1987). Second Edition and Updates I and II are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB-87-120-291). Third Edition and Revision I are available from Superintendent of Documents, Government Printing Office, 941 North Capitol Street, NE, Washington, DC 20002 (Document Number 955-001-00000-1).

e. *Salmonella sp.* Bacteria. Part 9260 D, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005; or Kenner,

B.A. and H.P. Clark, "Detection and Enumeration of Salmonella and Pseudomonas Aeruginosa," Journal of the Water Pollution Control Federation, Vol. 46, No. 9, September 1974, pp. 2163-2171. Water Environment Federation, 601 Wythe Street, Alexandria, VA 22314.

f. Specific Oxygen Uptake Rate. Part 2710 B, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

g. Total, Fixed, and Volatile Solids. Part 2540 G, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

h. Incineration of Sewage Sludge. Standards of Performance and Particulate Matter. Materials and Methods at 40 CFR Part 60 as incorporated by reference at LAC 33:III.3003.

i. Incineration of Sewage Sludge. National Emission Standards for Beryllium and for Mercury. Materials, Methods, and Standards at 40 CFR Part 61 as incorporated by reference at LAC 33:III.5116.

j. Composting of Sewage Sludge. "Test Methods for the Examination of Composting and Compost," The US Composting Council Research and Education Foundation and USDA, TMECC Website: <http://tmecc.org/tmecc/index.html>.

#### H. General Definitions

*Apply Sewage Sludge or Sewage Sludge Applied to the Land*—land application of sewage sludge.

*Base Flood*—a flood that has a 1 percent chance of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).

*Beneficial Use*—using sewage sludge or a material derived from sewage sludge or domestic septage for the purpose of soil conditioning or crop or vegetative fertilization in a manner that does not pose adverse effects upon human health and the environment or cause any deterioration of land surfaces, soils, surface waters, or groundwater.

*Bulk Sewage Sludge*—sewage sludge that is not sold or given away in a bag or other container for application to the land.

*Class I Sludge Management Facility*—for the purpose of this Subchapter:

a. any publicly owned treatment works (POTW) or privately owned wastewater treatment device or system, regardless of ownership, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage;

b. the person who prepares sewage sludge or a material derived from sewage sludge, including commercial blenders, composters, mixers, or preparers;

c. the owner/operator of a sewage sludge incinerator; and

d. the person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land.

*Commercial Blender, Composter, Mixer, or Preparer of Sewage Sludge*—any person who prepares sewage sludge or a material derived from sewage sludge for monetary profit or other financial consideration and either the person is not the generator of the sewage sludge or the sewage sludge was obtained from a facility or facilities not owned by or associated with the person.

*Cover Crop*—a small grain crop, such as oats, wheat, or barley, not grown for harvest.

*Domestic Septage*—either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

*Domestic Sewage*—waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

*Dry Weight Basis*—calculated on the basis of having been dried at 105° C until reaching a constant mass (i.e., essentially 100 percent solids content).

*Exceptional Quality*—sewage sludge or a material derived from sewage sludge that meets the ceiling concentrations in Table 1 of LAC 33:IX.3103.D, the pollutant concentrations in Table 3 of LAC 33:IX.3103.D, the pathogen requirements in LAC 33:IX.3111.C.1, one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h, and the concentration of PCBs of less than 10 mg/kg of total solids (dry weight).

*Feed Crops*—crops produced primarily for consumption by animals.

*Feedstock*—primarily biologically decomposable organic material that is blended, mixed, or composted with sewage sludge.

*Fiber Crops*—crops such as flax and cotton.

*Food Crops*—crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

*Groundwater*—water below the land surface in the saturated zone.

*Industrial Wastewater*—wastewater generated in a commercial or industrial process.

*Land Application*—the beneficial use of sewage sludge, a material derived from sewage sludge, or domestic septage by either spraying or spreading onto the land surface, injection below the land surface, or incorporation into the soil.

*Other Container*—either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

*Permitting Authority*—either EPA or a state with an EPA-approved sludge management program.

*Person Who Prepares Sewage Sludge*—either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

*Pollutant*—an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the administrative authority, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including

malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

*Pollutant Limit*—a numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

*Runoff*—rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

*Surface Disposal*—the use or disposal of sewage sludge that does not meet the criteria of *land application* as defined in this Subsection. This may include, but is not limited to, ponds, lagoons, sewage sludge only landfills (monofills), or landfarms.

*Supplements*—for the purpose of this Subchapter, materials blended, composted, or mixed with sewage sludge or other feedstock and sewage sludge in order to raise the moisture level and/or to adjust the carbon to nitrogen ratio, and materials added during composting or to compost to provide attributes required by customers for certain compost products.

*To Store, or Storage of, Sewage Sludge*—the temporary placement of sewage sludge on land.

*To Treat, or Treatment of, Sewage Sludge or Domestic Septage*—the preparation of sewage sludge or domestic septage for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

*Treatment Works*—either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:781 (April 2002).

### **§3103. Land Application**

#### **A. Applicability**

1. This Section applies to any person who prepares sewage sludge or a material derived from sewage sludge that is applied to the land; to any person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land; to sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land; and to the land on which sewage sludge, a material derived from sewage sludge, or domestic septage is applied.

2.a.i. The general requirements in Paragraph C.1 of this Section, the other requirements in Subparagraph E.1 of this Section, the general management practices in Paragraph C.2.a of this Section, and the other management practices in Paragraph E.2 of this Section do not apply when bulk sewage sludge is applied to the land if the bulk sewage sludge is *Exceptional Quality* as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

ii. The general requirements in Paragraph C.1 of this Section, the other requirements in Paragraph E.1 of this Section, the general management practices in Subparagraph C.2.a of this Section, and the other management practices in Paragraph E.2 of this Section do not apply when a bulk material derived from sewage sludge is applied to the land if the derived bulk material is *Exceptional Quality* as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

b. The state administrative authority may apply any or all of the general requirements in Paragraph C.1 of this Section, the other requirements in Paragraph E.1 of this Section, the general management practices in Subparagraph C.2.a of this Section and the other management practices in Paragraph E.2 of this Section to the bulk sewage sludge in Clause A.2.a.i of this Section and the bulk material in Clause A.2.a.ii of this Section on a case-by-case basis after determining that any or all of the requirements or management practices are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the bulk sewage sludge or bulk material derived from sewage sludge to the land.

3.a.i. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply if sewage sludge sold or given away in a bag or other container is *Exceptional Quality* as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

ii. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply if a material derived from sewage sludge is sold or given away in a bag or other container and the material is *Exceptional Quality* as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

iii. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived is *Exceptional Quality* as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

b. The state administrative authority may apply any or all of the general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section to the sewage sludge in Clause A.3.a.i of this Section or the derived material in Clause A.3.a.ii or iii of this Section on a case-by-case basis after determining that the general requirements or the general management practices are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the sewage sludge or derived material to the land.

#### B. Special Definitions

*Agricultural Land*—land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

*Agronomic Rate*—

a. the whole sludge application rate (dry weight basis) designed:

i. to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; and

ii. to minimize the amount of nitrogen in the sewage sludge that is not utilized by the crop or vegetation grown on the land and either passes below the root zone to the groundwater or gets into surface waters during storm events;

b. agronomic rate may be extended to include phosphorus to application sites that are located within the drainage basin of water bodies that have been determined by the state administrative authority to be impaired by phosphorus.

*Annual Pollutant Loading Rate*—the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

*Annual Whole Sludge Application Rate*—the maximum amount of sewage sludge (dry weight basis) that can be applied to a unit area of land during a 365-day period.

*Cumulative Pollutant Loading Rate*—the maximum amount of an inorganic pollutant that can be applied to an area of land.

*Forest*—a tract of land thick with trees and underbrush.

*Monthly Average*—the arithmetic mean of all measurements taken during the month.

*Pasture*—land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

*Public Contact Site*—land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

*Range Land*—open land with indigenous vegetation.

*Reclamation Site*—drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and construction sites.

### C. General Requirements and General Management Practices

#### 1. General Requirements

a.i. When a person who prepares sewage sludge provides the sewage sludge to another person who prepares the sewage sludge, the person who receives the sewage sludge shall comply with the requirements in this Subchapter.

ii. The person who provides the sewage sludge shall provide the person who receives the sewage sludge the following information:

(a) the name, mailing address, and location of the facility or facilities of the person providing the sewage sludge;

(b) the total dry metric tons being provided per 365-day period; and

(c) a description of any treatment processes occurring at the providing facility or facilities, including blending, composting, or mixing activities and the treatment to reduce pathogens and/or vector attraction reduction.

b. No person shall apply sewage sludge, a material derived from sewage sludge, or domestic septage to the land except in accordance with the requirements in this Subchapter.

c. The person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land shall obtain information needed to comply with the requirements in this Subchapter.

d. Sewage sludge, a material derived from sewage sludge, or domestic septage shall not be applied to the land until either a determination has been made by the administrative authority that the land application site is a legitimate beneficial use site or the person who applies the sewage sludge or a material derived from sewage sludge to the land furnishes to the administrative authority written documentation from a qualified, independent third party, such as the Louisiana Cooperative Extension Service or the Louisiana Department of Agriculture, that the land application site is a legitimate beneficial use site.

2. General Management Practices

a. All Sewage Sludge, a Material Derived from Sewage Sludge, or Domestic Septage

i. All sewage sludge or a material derived from sewage sludge shall be applied to agricultural land, forest, a public contact site, or a reclamation site only at a whole sludge application rate that is equal to or less than the agronomic rate for the sewage sludge or a material derived from sewage sludge, unless, in the case of a reclamation site, otherwise specified by the permitting authority.

ii. Sewage sludge, a material derived from sewage sludge, or domestic septage shall be applied to the land only in accordance with the requirements pertaining to slope in Table 1 of LAC 33:IX:3103.C.

iii. In addition to the restrictions addressed in Clause C.2.a.ii of this Section, all sewage sludge, a material derived from sewage sludge, or domestic septage having a concentration of PCBs equal to or greater than 10 mg/kg of total solids (dry wt.) must be incorporated into the soil regardless of slope.

iv. When sewage sludge, a material derived from sewage sludge, or domestic septage is applied to agricultural land, forest, or a reclamation site, the following buffer zones shall be established for each application area, unless otherwise specified by the state administrative authority:

(a). private potable water supply well C300 feet, unless special permission is granted by the private potable water supply owner;

(b). public potable water supply well, surface water intake, treatment plant, or public potable water supply elevated or ground storage tank C300 feet, unless special permission is granted by the Department of Health & Hospitals;

(c). established school, institution, business, or occupied residential structure C200 feet, unless special permission is granted by a qualified representative of the established school, institution, business, or occupied residential structure; and

(d). property boundary C100 feet, unless special permission is granted by the property owner(s).

v. Sewage sludge, a material derived from sewage sludge, or domestic septage shall not be applied to agricultural land, forest, or a reclamation site if the water table is less than three feet below the zone of incorporation at the time of application.

vi. No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365-day period if the annual application rate in Paragraph D.3 of this Section has been reached during that period.

b. Sewage Sludge Sold or Given Away in a Bag or Other Container

i. Sewage sludge sold or given away in a bag or other container shall not be applied to the land at a rate that would cause any of the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded.

ii. The permittee shall either affix a label to the bag or other container holding sewage sludge that is sold or given away for application to the land, or shall provide an information sheet to the person who receives sewage sludge sold or given away in a bag or other container for application to the land. The label or information sheet shall contain the following information:

(a). the name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land;

(b). application instructions and a statement that application of the sewage sludge to the land is prohibited except in accordance with the instructions on the label or information sheet;

(c). the annual whole sludge application rate for the sewage sludge that does not cause any of the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded; and

(d). concentration of PCBs in mg/kg of total solids (dry wt.).

<b>Table 1 of LAC 33:IX.3103.C</b>	
<b>Slope Limitations for Land Application of Sewage Sludge or Domestic Septage</b>	
<b>Slope Percent</b>	<b>Application Restriction</b>
0-3	None, except drainage to prevent standing water shall be provided.
3-6	A 100-foot vegetated runoff area should be provided at the down slope end of the application area if a liquid is applied. Measures should be taken to prevent erosion.
6-12	Liquid material must be injected into the soil. Solid material must be incorporated into the soil if the site is not covered with vegetation. A 100-foot vegetated runoff area is required at the down slope end of the application area for all applications. Measures must be taken to prevent erosion. Terracing may be required if deemed a necessity by the state administrative authority to prevent runoff from the land application site and erosion.
>12	Unsuitable for application unless terraces are constructed and a 200-foot vegetated buffer area with a slope of less than 3 percent is provided at the down slope edge of the application area and the material is incorporated (solid material) and injected (liquid material) into the soil. Measures must be taken to prevent runoff from the land application site and to prevent erosion.

D. Pollutant Limits

1. Sewage Sludge

a. Bulk sewage sludge or sewage sludge sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of LAC 33:IX.3103.D.

b. If bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site, either:

i. the cumulative loading rate for each pollutant shall not exceed the cumulative pollutant loading rate for the pollutant in Table 2 of LAC 33:IX.3103.D; or

ii. the concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of LAC 33:IX.3103.D.

c. If sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden, the concentration of each pollutant in the sewage sludge or the material derived from sewage sludge shall not exceed the ceiling concentrations in Table 1 of LAC 33:IX.3103.D and the pollutant concentrations for each pollutant listed in Table 3 of LAC 33:IX.3103.D, and the concentration of PCB must be less than 10 mg/kg of total solids (dry wt.).

d. If sewage sludge is sold or given away in a bag or other container for application to the land, either:

i. the concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of LAC 33:IX.3103.D; or

ii. the product of the concentration of each pollutant in the sewage sludge and the annual whole sludge application rate for the sewage sludge shall not cause the annual pollutant loading rate for the pollutant in Table 4 of LAC 33:IX.3103.D to be exceeded. The procedure used to determine the annual whole sludge application rate is presented in Appendix P of this Chapter.

2. Pollutant Concentrations and Loading Rates

a. Ceiling Concentrations

Table 1 of LAC 33:IX.3103.D	
Ceiling Concentrations	
Pollutant	Ceiling Concentration (milligrams per kilogram) <sup>1</sup>
Arsenic	75
Cadmium	85
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500
<sup>1</sup> Dry weight basis	

b. Cumulative Pollutant Loading Rates

Table 2 of LAC 33:IX.3103.D	
Cumulative Pollutant Loading Rates	
Pollutant	Cumulative Pollutant Loading Rate (kilograms per hectare)
Arsenic	41
Cadmium	39
Copper	1500
Lead	300

Mercury	17
Nickel	420
Selenium	100
Zinc	2800

c. Pollutant Concentrations

Table 3 of LAC 33:IX.3103.D	
Pollutant Concentrations	
Pollutant	Monthly Average Concentration (milligrams per kilogram) <sup>1</sup>
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800
<sup>1</sup> Dry weight basis	

d. Annual Pollutant Loading Rates

Table 4 of LAC 33:IX.3103.D	
Annual Pollutant Loading Rates	
Pollutant	Annual Pollutant Loading Rate (kilograms per hectare per 365-day period)
Arsenic	2.0
Cadmium	1.9
Copper	75
Lead	15
Mercury	0.85
Nickel	21
Selenium	5.0
Zinc	140

3. Domestic Septage. The annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate calculated using Equation (1).

$$AAR = \frac{N}{0.0026} \quad \text{Equation (1)}$$

Where:

AAR= annual application rate in gallons per acre per 365-day period.

N = amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

E. Other Requirements and Other Management Practices for Bulk Sewage Sludge

1. Other Requirements

a. The person who prepares bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk sewage sludge written notification of the concentration, on a dry weight basis, of total nitrogen, ammonia (as N), nitrates, potassium, and phosphorus in the bulk sewage sludge.

b. When a person who prepares bulk sewage sludge provides the bulk sewage sludge to a person who applies the bulk sewage sludge to the land, the person who prepares the bulk sewage sludge shall provide the person who applies the



bulk sewage sludge notice and necessary information to comply with the requirements in this Subchapter.

c. The person who applies bulk sewage sludge to the land shall provide the owner or leaseholder of the land on which the bulk sewage sludge is applied notice and necessary information to comply with the requirements in this Subchapter.

d. No person shall apply bulk sewage sludge subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D to the land without first contacting the state administrative authority to determine if bulk sewage sludge subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D has been applied to the land since July 20, 1993.

e. No person shall apply bulk sewage sludge subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D has been reached.

f. If bulk sewage sludge has not been applied to a site since July 20, 1993, the cumulative amount for each pollutant listed in Table 2 of LAC 33:IX.3103.D may be applied to the site in accordance with Clause D.1.b.i of this Section.

g. If bulk sewage sludge has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk sewage sludge since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with Clause D.1.b.i of this Section.

h. If bulk sewage sludge has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk sewage sludge since that date is not known, an additional amount of each pollutant shall not be applied to the site in accordance with Clause D.1.b.i of this Section.

## 2. Other Management Practices

a. Bulk sewage sludge shall not be applied to the land if it is likely to adversely affect a threatened or endangered species listed under Section 4 of the Endangered Species Act or its designated critical habitat.

b. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a *wetland* or other *waters of the state*, as defined in LAC 33:IX.2313, except as provided in a permit issued in accordance with Section 402 or 404 of the CWA or LAC 33:IX.Chapter 23.

c. Bulk sewage sludge shall not be applied to agricultural land, forest, or a reclamation site that is 33 feet (10 meters) or less from *waters of the state*, as defined in LAC 33:IX.2313, unless otherwise specified by the permitting authority.

## F. Operational Standards

### CPathogens and Vector Attraction Reduction

#### 1. Pathogens

##### CSewage Sludge

a. The Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 or the Class B pathogen requirements and site restrictions in LAC 33:IX.3111.C.2 shall be met when bulk sewage sludge is applied to

agricultural land, forest, a public contact site, or a reclamation site.

b. The Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 shall be met when sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden.

c. The Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

2. Pathogens

#### CDomestic Septage.

The requirements in either LAC 33:IX.3111.C.3.a or b shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

#### 3. Vector Attraction Reduction

##### CSewage Sludge

a. One of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-j shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h shall be met when sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

4. Vector Attraction Reduction

#### CDomestic Septage.

The vector attraction reduction requirements in LAC 33:IX.3111.D.2.i, j, or k shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

## G Frequency of Monitoring

### 1. Sewage Sludge

a. The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3, and Table 4 of LAC 33:IX.3103.D; the frequency of monitoring for pathogen density requirements in LAC 33:IX.3111.C.1 and 2.b; and the frequency of monitoring for vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-d and g-h shall be the frequency specified in Table 1 of LAC 33:IX.3103.G.

Table 1 of LAC 33:IX.3103.G	
Frequency of Monitoring -- Land Application	
Amount of Sewage Sludge <sup>1</sup> (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year)
Equal to or greater than 15,000	Once per month (12 times per year)

<sup>1</sup>Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).

b. After the sewage sludge has been monitored for two years at the frequency in Table 1 of LAC 33:IX.3103.G, the permitting authority may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in LAC 33:IX.3111.C.1.e.ii and iii.

2. Domestic Septage. If either the pathogen requirements in LAC 33:IX.3111.C.3.b or the vector attraction reduction requirements in LAC 33:IX.3111.D.2.k

are met when domestic septage is applied to agricultural land, forest, or a reclamation site, the permittee shall monitor each container of domestic septage applied to the land for compliance with those requirements.

#### H. Recordkeeping

1. All Class I sludge management facilities, as defined in LAC 33:IX.2313, that prepare sewage sludge shall keep a record of the annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

##### 2. Sewage Sludge

a. The recordkeeping requirements for the person who prepares the sewage sludge or a material derived from sewage sludge that is land applied and meets the criteria in Subparagraph A.2.a or 3.a of this Section are those indicated in Subparagraph J.5.a of this Section.

b. For bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site and that meets the pollutant concentrations in Table 3 of LAC 33:IX.3103.D, the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1, and the vector attraction reduction requirements in either LAC 33:IX.3111.D.2.i or j:

i. the person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 3 of LAC 33:IX.3103.D;

(b). a description of how the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 are met; and

(c). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk sewage sludge to the land shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Clauses C.2.a.i-v of this Section and the other management practices in Paragraph E.2 of this Section are met for each site on which bulk sewage sludge is applied;

(b). a description of how the vector attraction reduction requirements in either LAC 33:IX.3111.D.2.i or j are met for each site on which bulk sewage sludge is applied; and

(c). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i-v, the other management practices in LAC 33:IX.3103.E.2 and the vector attraction reduction requirement in [insert either LAC 33:IX.3111.D.2.i or j] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified

personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

c. For bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site and that meets the pollutant concentrations in Table 3 of LAC 33:IX.3103.D, the Class B pathogen requirements in LAC 33:IX.3111.C.2, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h for the person who prepares the bulk sewage sludge, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.i or j for the person who applies the bulk sewage sludge to the land:

i. the person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 3 of LAC 33:IX.3103.D;

(b). a description of how the Class B pathogen requirements in LAC 33:IX.3111.C.2 are met;

(c). a description of how one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h is met; and

(d). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the Class B pathogen requirements in LAC 33:IX.3111.C.2 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk sewage sludge to the land shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Clauses C.2.a.i-v of this Section and the other management practices in Paragraph E.2 of this Section are met for each land site on which bulk sewage sludge is applied;

(b). a description of how the site restrictions in LAC 33:IX.3111.C.2.e are met for each land site on which bulk sewage sludge is applied;

(c). a description of how the vector attraction reduction requirement in either LAC 33:IX.3111.D.2.i or j is met;

(d). the date bulk sewage sludge is applied to each site; and

(e). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i-v, the other management practices in LAC 33:IX.3103.E.2, the site restrictions in LAC 33:IX.3111.C.2.e, and the vector attraction reduction requirement in [insert either LAC 33:IX.3111.D.2.i or j] was prepared for each site on which bulk sewage sludge is applied under my direction and supervision in accordance with the system as described in

the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

d. For bulk sewage sludge applied to the land that is agricultural land, forest, a public contact site, or a reclamation site whose cumulative loading rate for each pollutant does not exceed the cumulative pollutant loading rate for each pollutant in Table 2 of LAC 33:IX.3103.D and that meets the *Exceptional Quality* or Class B pathogen requirements in LAC 33:IX.3111.C, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h for the person who prepares the bulk sewage sludge, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.i or j for the person who applies the bulk sewage sludge to the land:

i. the person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 1 of LAC 33:IX.3103.D in the bulk sewage sludge;

(b). a description of how the *Exceptional Quality* or Class B pathogen requirements in LAC 33:IX.3111.C are met;

(c). how one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h is met; and

(d). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in [insert either LAC 33:IX.3111.C.1 or 2] and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk sewage sludge to the land shall develop the following information, retain the information in Subclauses H.2.d.ii.(a)-(g) of this Section indefinitely, and retain the information in Subclauses H.2.d.ii.(h)-(m) of this Section for five years:

(a). the location, by either street address or latitude and longitude, of each land site on which bulk sewage sludge is applied;

(b). the number of hectares or acres in each site on which bulk sewage sludge is applied;

(c). the date bulk sewage sludge is applied to each land site;

(d). the cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of LAC 33:IX.3103.D in the bulk sewage sludge applied to each land site, including the amount in Subparagraph E.1.g of this Section;

(e). the amount of sewage sludge (i.e., tons or metric tons) applied to each land site;

(f). a description of how the information was obtained in order to comply with Paragraph E.1 of this Section;

(g). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the requirements in LAC 33:IX.3103.E.1 was prepared for each land site on which bulk sewage sludge was applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(h). a description of how the general management practices in Clauses C.2.a.i-v of this Section and the other management practices in Paragraph E.2 of this Section are met for each land site on which bulk sewage sludge is applied;

(i). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i-v and the other management practices in LAC 33:IX.3103.E.2 was prepared for each land site on which bulk sewage sludge was applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(j). a description of how the site restrictions in LAC 33:IX.3111.C.2.e are met for each land site on which Class B bulk sewage sludge is applied;

(k). the following certification statement when the bulk sewage sludge meets the Class B pathogen requirements in LAC 33:IX.3111.C.2: "I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in LAC 33:IX.3111.C.2.e for each land site on which Class B sewage sludge was applied was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(l). if the vector attraction reduction requirements in either LAC 33:IX.3111.D.2.i or j are met, a description of how the requirements are met; and

(m). the following certification statement when the vector attraction reduction requirement in either LAC 33:IX.3111.D.2.i or j is met: "I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in [insert either LAC 33:IX.3111.D.2.i or j] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

e. for sewage sludge sold or given away in a bag or other container for application to the land meeting the

requirement at Clause D.1.d.ii of this Section, the Exceptional Quality pathogen requirements at LAC 33:IX.3111.C, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h:

i. the person who prepares the sewage sludge that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

(a). the annual whole sludge application rate for the sewage sludge that does not cause the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded;

(b). the concentration of each pollutant listed in Table 4 of LAC 33:IX.3103.D in the sewage sludge;

(c). a description of how the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 are met;

(d). a description of how one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h is met;

(e). a description of how the general management practice in Clause C.2.b.ii of this Section was met; and

(f). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practice in LAC 33:IX.3103.C.2.b.ii, the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1, and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

ii. the person who applies the sewage sludge that is given away or sold in a bag or other container to the land that is agricultural land, forest, a public contact site, or a reclamation area shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Clauses C.2.a.i-v and b.i of this Section are met for each site on which the sewage sludge given away or sold in a bag or other container is applied; and

(b). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i-v and b.i was prepared for each site on which sewage sludge given away or sold in a bag or other container is applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment."

3. Domestic Septage. The person who applies domestic septage to agricultural land, forest, or a reclamation site shall develop the following information and shall retain the information for five years:

a. the location, by either street address or latitude and longitude, of each site on which domestic septage is applied;

b. the number of acres in each site on which domestic septage is applied;

c. the date domestic septage is applied to each site;

d. the nitrogen requirement for the crop or vegetation grown on each site during a 365-day period;

e. the rate, in gallons per acre per 365-day period, at which domestic septage is applied to each site;

f. a description of how the pathogen requirements in either LAC 33:IX.3111.C.3.a or b are met;

g. a description of how the vector attraction reduction requirements in LAC 33:IX.3111.D.2.i, j, or k are met;

h. a description of how the general management practices in Clauses C.2.a.ii-vi of this Section are met; and

i. the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices at LAC 33:IX.3103.C.2.a.ii-vi, the pathogen requirements in [insert either LAC 33:IX.3111.C.3.a or b] and the vector attraction reduction requirements in [insert LAC 33:IX.3111.D.2.i, j, or k] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

#### I. Reporting

1. All Class I sludge management facilities, as defined in LAC 33:IX.2313, that prepare sewage sludge shall submit the information in Paragraph H.1 of this Section to the state administrative authority on February 19 of each year.

#### 2. Additional Reporting Requirements

a. Reporting requirements for a person who prepares the sewage sludge or a material derived from sewage sludge having an Exceptional Quality Certification are as indicated in Subparagraph J.5.b of this Section.

b. All other Class I sludge management facilities, as defined in LAC 33:IX.2313, except the person in Clause H.2.d.ii of this Section who applies bulk sewage sludge to the land and the person who applies domestic septage to the land, that are required to obtain a permit under LAC 33:IX.3101.C, shall submit the information in Paragraph H.2 of this Section, except the information in Clause H.2.d.ii of this Section, for the appropriate requirements, to the state administrative authority on February 19 of each year.

c. The person referred to in Clause H.2.d.ii of this Section who applies bulk sewage sludge to the land and is required to obtain a permit under LAC 33:IX.3101.C shall submit the information in Clause H.2.d.ii of this Section to the state administrative authority on February 19 of each year when 90 percent or more of any of the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D is reached at a land application site.

d. The person who applies domestic septage to the land shall submit the information referred to in Paragraph H.3 of this Section for the appropriate requirements to the state administrative authority on February 19 of each year.

3. The state administrative authority may require any facility indicated in Subparagraph I.2.a of this Section to report any or all of the information required in Subparagraphs I.2.b-d of this Section if deemed necessary for the protection of human health or the environment.

J. Exceptional Quality Certification

1.a. The person who prepares the sewage sludge or a material derived from sewage sludge who desires to receive an Exceptional Quality Certification must prepare sewage sludge that is *Exceptional Quality* as defined in LAC 33:IX.3101.H and shall forward to the state administrative authority an Exceptional Quality Certification Request Form having the following information:

- i. the laboratory analysis of the metals in Table 3 of LAC 33:IX.3103.D;
- ii. the laboratory analysis for pH, percent dry solids, percent ammonia nitrogen, percent nitrate-nitrite, percent total Kjeldahl nitrogen, percent organic nitrogen, percent phosphorus, percent potassium, and percent organic matter;
- iii. the laboratory results for polychlorinated biphenyls (PCBs);
- iv. the Exceptional Quality pathogen requirement in LAC 33:IX.3111.C.1 used and the results obtained;
- v. the vector attraction reduction requirement in LAC 33:IX.3111.D.2.a-h used and the results obtained; and
- vi. for sewage sludge or a material derived from sewage sludge that is sold or given away either in bulk or in a bag, an example of the label or information sheet that will accompany the sewage sludge or material derived from sewage sludge. The label or information sheet shall contain the following information:
  - (a). name and address of the preparer;
  - (b). concentration (by volume) of each metal in Table 3 of LAC 33:IX.3103.D;
  - (c). total nitrogen;
  - (d). percent ammonia (as N);
  - (e). percent phosphorus;
  - (f). pH;
  - (g). concentration of PCBs in mg/kg of total solids (dry wt.); and
  - (h) application instructions and a statement that application of the sewage sludge to the land is prohibited except in accordance with the instructions on the label or information sheet.

b. Samples required to be collected in accordance with Clauses J.1.a.i-v of this Section shall be from at least four representative samplings of the sewage sludge or the material derived from sewage sludge taken at least 60 days apart within the 12 months prior to the date of the submittal of an Exceptional Quality Certification Request Form.

2. The state administrative authority shall determine whether the sewage sludge or the material derived from sewage sludge is of *Exceptional Quality* as defined in LAC 33:IX.3101.H, and shall determine whether to issue an Exceptional Quality Certification, within 30 days of having received a complete form having all of the information requested in Subparagraph J.1.a of this Section.

3. Any Exceptional Quality Certification shall have a term of not more than five years.

4.a. For the term of the Exceptional Quality Certification, the preparer of the sewage sludge or material

derived from sewage sludge shall conduct continued sampling at the frequency of monitoring specified in Paragraph G.1 of this Section. The samples shall be analyzed for the parameters specified in Clauses J.1.a.i-iii of this Section, and for the pathogen and vector attraction reduction requirements in Clauses J.1.a.iv and v, as required by LAC 33:IX.3111.

b. If results of the sampling indicate that the sewage sludge or the material derived from sewage sludge no longer is *Exceptional Quality* as defined in LAC 33:IX.3101.H, then the preparer must cease any land application of the sewage sludge as an Exceptional Quality sewage sludge.

c. If the sewage sludge that is no longer of *Exceptional Quality* is used or disposed, the exemption for Exceptional Quality sewage sludge no longer applies and the sewage sludge must meet all the requirements and restrictions of this Subchapter that apply to a sewage sludge that is not *Exceptional Quality*.

d. The sewage sludge or material derived from sewage sludge shall not be applied to the land as an Exceptional Quality sewage sludge until the sample analyses have shown that the sewage sludge or material derived from sewage sludge meets the criteria for *Exceptional Quality* as defined in LAC 33:IX.3101.H.

5.a. Recordkeeping. The person who prepares the sewage sludge or a material derived from sewage sludge shall develop the following information and shall retain the information for five years:

- i. the results of the sample analysis required in Subparagraph J.4.a of this Section; and
- ii. the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

b. Reporting. The person who prepares the sewage sludge or a material derived from sewage sludge shall forward the information required in Subparagraph J.5.a of this Section to the state administrative authority on a quarterly basis. The schedule for quarterly submission is contained in the following table.

Schedule For Quarterly Submission	
Monitoring Period	DMR Due Date
January, February, March	April 28
April, May, June	July 28
July, August, September	October 28
October, November, December	January 28

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074.B.(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:785 (April 2002).

**§3107. Siting and Operation Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge**

**A. Siting**

**1. Location Characteristics**

a. Facilities shall not be located less than 200 feet from a property line. A reduction in this requirement shall be allowed only with the permission, in the form of a notarized affidavit, of the adjoining landowners and occupants. A copy of the notarized affidavit waiving the 200-foot buffer zone shall be entered in the mortgage and conveyance records of the parish for the adjoining landowner's property.

b. Facilities shall not be located less than 200 feet from a residence or place of business.

c. Facilities shall not be located less than 100 feet from a private or public potable water source.

d. Facilities shall not be located less than 25 feet from a subsurface drainage pipe or drainage ditch that discharges directly to waters of the state.

e. Composting operations should not be located on airports. However, when they are located on an airport, composting operations should not be located closer than the greater of the following distances: 1,200 feet from any aircraft movement area, loading ramp, or aircraft parking space; or the distance called for by airport design requirements.

f. Facilities shall not be located less than 100 feet from a wetlands, surface waters (streams, ponds, lakes), or areas historically subject to overflow from floods.

g. Facilities shall only be located in a hydrologic section where the historic high water table is at a minimum of a three-foot depth below the surface, or the water table at the facility shall be controlled to a minimum of a three-foot depth below this zone.

h. Storage and processing of sewage sludge or any material derived from sewage sludge is prohibited within any of the buffer zones indicated in Subparagraphs A.1.a-g of this Section.

i. Facilities located in, or within, 1,000 feet of swamps, marshes, wetlands, estuaries, wildlife-hatchery areas, habitat of endangered species, archaeological sites, historic sites, publicly owned recreation areas, and similar critical environmental areas shall be isolated from such areas by effective barriers that eliminate probable adverse impacts from facility operations.

j. Facilities located in, or within, 1,000 feet of an aquifer recharge zone shall be designed to protect the areas from adverse impacts of operations at the facility.

k. Access to facilities by land or water transportation shall be by all-weather roads or waterways that can meet the demands of the facility and are designed to avoid, to the extent practicable, congestion, sharp turns, obstructions, or other hazards conducive to accidents; and the surface roadways shall be adequate to withstand the weight of transportation vehicles.

**2. Facility Characteristics**

**a. Perimeter Barriers, Security, and Signs**

i. All facilities must have a perimeter barrier around the facility that prevents unauthorized ingress or egress, except by willful entry.

ii. During operating hours, each facility entry point shall be continuously monitored, manned, or locked.

iii. During non-operating hours, each facility entry point shall be locked.

iv. All facilities that receive wastes from off-site sources shall post readable signs that list the types of wastes that can be received at the facility.

b. Fire Protection and Medical Care. All facilities shall have access to required fire protection and medical care, or such services shall be provided internally.

c. Receiving and Monitoring Sewage Sludge, Other Feedstock, or Supplements Used

i. Each processing facility shall be equipped with a device or method to determine quantity (by wet-weight tonnage), sources (whether the sewage sludge or other feedstock or supplements to be mixed with the sewage were generated in-state or out-of-state), and types of feedstock or supplements. The facility shall also be equipped with a device or method to control entry of sewage sludge, other feedstock, or supplements coming on-site and prevent entry of unrecorded or unauthorized deliverables (i.e., hazardous, industrial, unauthorized, or unpermitted solid waste).

ii. Each processing facility shall be equipped with a central control and recordkeeping system for tabulating the information required in Clause A.2.c.i of this Section.

**3. Facility Surface Hydrology**

a. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the facility to adjoining areas during a 24-hour/25-year storm event. When rainfall records are not available, the design standard shall be 12 inches of rainfall below 31 degrees north latitude and 9 inches of rainfall above 31 degrees north latitude. If the 24-hour/25-year storm event level is lower, the design standard shall be required.

b. The topography of the facility shall provide for drainage to prevent standing water and shall allow for drainage away from the facility.

c. All storm water and wastewater from a facility must conform to applicable requirements of Subchapters A-W of this Chapter.

**4. Facility Geology**

a. Except as provided in Subparagraph A.4.c of this Section, facilities shall have natural stable soils of low permeability for the area occupied by the facility, including vehicle parking and turnaround areas, that should provide a barrier to prevent any penetration of surface spills into groundwater aquifers underlying the area or to a sand or other water-bearing stratum that would provide a conduit to such aquifer.

b. The natural soil surface must be capable of supporting heavy equipment operation during and after prolonged periods of rain.

c. A design for surfacing natural soils that do not meet the requirements in Subparagraphs A.4.a and b of this Section shall be prepared under the supervision of a registered engineer, licensed in the state of Louisiana with expertise in geotechnical engineering and geohydrology. Written certification by the engineer that the surface satisfies the requirements of Subparagraphs A.4.a and b of this Section shall be provided.

5. Facility Plans and Specifications. Facility plans and specifications represented and described in the permit application or permit modifications for all facilities must be

prepared under the supervision of, and certified by, a registered engineer, licensed in the state of Louisiana.

6. Facility Administrative Procedures

a. Permit Modifications. Permit modifications shall be in accordance with the requirements of this Chapter.

b. Personnel. All facilities shall have the personnel necessary to achieve the operational requirements of the facility.

B. Operations

1. Composters, Mixers, Blenders, and Preparers

a. Facility Operations and Maintenance Manual

i. A Facility Operations and Maintenance Manual shall be developed and forwarded with the permit application to the state administrative authority.

ii. The Facility Operations and Maintenance Manual must describe, in specific detail, how the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge (if applicable) will be managed during all phases of processing operations. At a minimum, the manual shall address the following:

- (a). site and project description;
- (b). regulatory interfaces;
- (c). process management plan;
- (d). pathogen treatment plan;
- (e). odor management plan;
- (f). worker health and safety management plan;
- (g). housekeeping and nuisance management plan;
- (h). emergency preparedness plan;
- (i). security, community relations, and public access plan;
- (j). regulated chemicals (list and location of regulated chemicals kept on-site);
- (k). recordkeeping procedures;
- (l). feedstock, supplements, and process management;
- (m). product distribution records;
- (n). operator certification; and
- (o). administration of the operations and maintenance manual.

iii. The Facility Operations and Maintenance Manual shall be kept on-site and readily available to employees and, if requested, to the state administrative authority or his/her duly authorized representative.

b. Facility Operational Standards

i. The facility must include a receiving area, mixing area, curing area, compost storage area for composting operations, drying and screening areas, and truck wash area located on surfaces capable of preventing groundwater contamination (periodic inspections of the surface shall be made to ensure that the underlying soils and the surrounding land surface are not being contaminated).

ii. All containers shall provide containment of the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge and thereby control litter and other pollution of adjoining areas.

iii. Provisions shall be made for the daily cleanup of the facility, including equipment and waste-handling areas.

iv. Treatment facilities for washdown and contaminated water shall be provided or the wastewater

contained, collected, and transported off-site to an approved wastewater treatment facility.

v. Leachate Management. Leachate produced in the composting process:

(a). must be collected and disposed off-site at a permitted facility; or

(b). must be collected, treated, and discharged on-site in accordance with Subchapters A-W of this Chapter; or

(c). may be reused in the composting process as a source of moisture.

vi. Sufficient equipment shall be provided and maintained at all facilities to meet their operational needs.

vii. Odor Management

(a). The production of odor shall be minimized.

(b). Processed air and other sources of odor shall be contained and, if necessary, treated in order to remove odor before discharging to the atmosphere.

viii. Other feedstock and supplements that are blended, composted, or mixed with sewage sludge shall be treated for the effective removal of sharps including, but not limited to, sewing needles, straight pins, hypodermic needles, telephone wires, and metal bracelets.

2. Composters Only

a. Any compost made from sewage sludge that cannot be used according to these regulations shall be reprocessed or disposed of in an approved solid waste facility.

b. Composted sewage sludge shall be used, sold, or disposed of at a permitted disposal facility within 36 months of completion of the composting process.

3. Facility Closure Requirements

a. Notification of Intent to Close a Facility. All permit holders shall notify the administrative authority in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

i. date of planned closure;

ii. changes, if any, requested in the approved closure plan; and

iii. closure schedule and estimated cost.

b. Closure Requirements

i. An insect and rodent inspection is required before closure. Extermination measures, if required, must be provided.

ii. All remaining sewage sludge or a material derived from sewage sludge, other feedstock, and supplements shall be removed to a permitted facility for disposal.

iii. The permit holder shall verify that the underlying soils have not been contaminated in the operation of the facility. If contamination exists, a remediation/removal program developed to meet the requirements of Subparagraph B.3.c of this Section must be provided to the administrative authority.

c. Remediation/Removal Program

i. Surface liquids and sewage sludges containing free liquids shall be dewatered or removed.

ii. If a clean closure is achieved, there are no further post-closure requirements. The plan for clean closure must reflect a method for determining that all waste has been

removed, and such a plan shall, at a minimum, include the following:

(a). identification (analysis) of the sewage sludge, other feedstock, and supplements that have entered the facility;

(b). selection of the indicator parameters to be sampled that are intrinsic to the sewage sludge, other feedstock, and supplements that have entered the facility in order to establish clean-closure criteria. Justification of the parameters selected shall be provided in the closure plan;

(c). sampling and analyses of the uncontaminated soils in the general area of the facility for a determination of background levels using the indicator parameters selected. A diagram showing the location of the area proposed for the background sampling, along with a description of the sampling and testing methods, shall be provided;

(d). a discussion of the sampling and analyses of the "clean" soils for the selected parameters after the waste and contaminated soils have been excavated. Documentation regarding the sampling and testing methods (i.e., including a plan view of the facility, sampling locations, and sampling quality-assurance/quality-control programs) shall be provided;

(e). a discussion of a comparison of the sample(s) from the area of the excavated facility to the background sample. Concentrations of the selected parameter(s) of the bottom and side soil samples of the facility must be equal to or less than the background sample to meet clean closure criteria;

(f). analyses to be sent to the Office of Environmental Services, Permits Division confirming that the requirements of Subparagraph B.3.b of this Section have been satisfied;

(g). identification of the facility to be used for the disposal of the excavated waste; and

(h). a statement from the permit holder indicating that, after the closure requirements have been met, the permit holder will file a request for a closure inspection with the Office of Environmental Services, Permits Division before backfilling takes place. The administrative authority will determine whether the facility has been closed properly.

iii. If sewage sludge or a material derived from sewage sludge or other feedstock and supplements used in the blending, composting, or mixing process remains at the facility, the closure and post-closure requirements for industrial (Type I) solid waste landfills or non-industrial landfills (Type II), as provided in LAC 33:VII, shall apply.

iv. If the permit holder demonstrates that removal of most of the sewage sludge or a material derived from sewage sludge or other feedstock and supplements to achieve an alternate level of contaminants based on indicator parameters in the contaminated soil will be adequately protective of human health and the environment (including groundwater) in accordance with LAC 33:I.Chapter 13, the administrative authority may decrease or eliminate the post-closure requirements.

(a). If levels of contamination at the time of closure meet residential standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Clause B.3.c.iv of this Section shall not apply.

(b). Excepting those sites closed in accordance with Subclause B.3.c.iv.(a) of this Section, within 90 days after a closure is completed, the permit holder must have entered in the mortgage and conveyance records of the parish in which the property is located, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.

v. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:794 (April 2002).

### **§3109. Financial Assurance Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge**

A. Financial Responsibility During Operation. Permit holders or applicants for standard permits have the following financial responsibilities while the facility is in operation.

1. Permit holders and applicants must maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of \$1 million per occurrence and \$1 million annual aggregate, per site, exclusive of legal-defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Evidence of this coverage shall be updated annually and provided to the Office of Management and Finance, Financial Services Division.

2. The financial responsibility may be established by any one or a combination of the following.

a. Evidence of liability insurance may consist of either a signed duplicate original of a commercial blender, composter, or mixer of sewage sludge liability endorsement, or a certificate of insurance. All liability endorsements and certificates of insurance must include:

i. a statement of coverage relative to environmental risks;

ii. a statement of all exclusions to the policy; and

iii. a certification by the insurer that the insurance afforded with respect to such sudden accidental occurrences is subject to all of the terms and conditions of the policy, provided, however, that any provisions of the policy inconsistent with the following Subclauses (a)-(f) are amended to conform with said subclauses:

(a). bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy;

(b). the insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Paragraph A.3, 4, or 5 of this Section;

(c). whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements;

(d). cancellation of the policy, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written



notice is received by the Office of Management and Finance, Financial Services Division;

(e). any other termination of the policy will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the Office of Management and Finance, Financial Services Division; and

(f). the insurer is admitted, authorized, or eligible to conduct insurance business in Louisiana.

b. The wording of the liability endorsement shall be identical to the wording in Document 1 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

c. The wording of the certificate of insurance shall be identical to the wording in Document 2 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

3. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the following requirements, and by submitting the letter to the administrative authority.

a. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund agreement shall be as specified in Subparagraph B.3.i of this Section.

c. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, name of issuing institution, and date, and providing the following information:

i. agency interest number;

ii. site name;

iii. facility name;

iv. facility permit number; and

v. the amount of funds assured for liability coverage of the facility by the letter of credit.

d. The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the Office of Management and Finance, Financial Services Division receive the notice, as evidenced by the return receipts.

e. The wording of the letter of credit shall be identical to the wording in Document 3 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

#### 4. Financial Test

a. To meet this test, the applicant, permit holder, or parent corporation of the applicant (corporate guarantor) or permit holder must submit to the Office of Management and Finance, Financial Services Division the documents required by Subsection B of this Section demonstrating that the requirements of Subsection B of this Section have been met. Use of the financial test may be disallowed on the basis of the accessibility of the assets of the permit holder, applicant, or parent corporation (corporate guarantor). If the applicant, permit holder, or parent corporation is using the financial test to demonstrate liability coverage and closure and post-closure care, only one letter from the chief financial officer is required.

b. The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as authorized in Paragraph A.5 of this Section.

c. The wording of the financial test shall be as specified in Subparagraph B.8.d of this Section.

#### 5. Corporate Guarantee

a. A permit holder or applicant may meet the requirements of Paragraph A.1 of this Section for liability coverage by obtaining a written guarantee, hereafter referred to as a "corporate guarantee." The guarantor must demonstrate to the administrative authority that the guarantor meets the requirements in this Subsection and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subparagraphs B.8.b and d of this Section. The terms of the corporate guarantee must be in an authentic act signed and sworn to by an authorized officer of the corporation before a notary public and must provide that:

i. the guarantor meets or exceeds the financial-test criteria and agrees to comply with the reporting requirements for guarantors as specified in Paragraph B.8 of this Section;

ii. the guarantor is the parent corporation of the permit holder or applicant of the commercial blender, composter, or mixer of sewage sludge facility or facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

iii. if the permit holder or applicant fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences (or both as the case may be), arising from the operation of facilities covered by the corporate guarantee, or fails to pay an amount agreed to in settlement of the claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage;

iv. the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial-test criteria, the guarantor shall send within 90 days, by certified mail, notice to the Office of Management and Finance, Financial Services Division, and to the permit holder or applicant, that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of said fiscal year the

guarantor shall establish such financial assurance, unless the permit holder or applicant has done so;

v. the guarantor agrees to notify the Office of Management and Finance, Financial Services Division by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

vi. the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial-test criteria or that he or she is disallowed from continuing as a guarantor of closure or post-closure care, he or she shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant unless the permit holder or applicant has done so;

vii. the guarantor agrees to remain bound under the guarantee notwithstanding any or all of the following: amendment or modification of the permit, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;

viii. the guarantor agrees to remain bound under the guarantee for as long as the permit holder or applicant must comply with the applicable financial assurance requirements of Subsection B of this Section for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the administrative authority and the permit holder or applicant. Such cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder, as evidenced by the return receipts;

ix. the guarantor agrees that if the permit holder or applicant fails to provide alternate financial assurance, as specified in this Subsection, and obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the permit holder or applicant;

x. the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder or applicant. Guarantor also expressly waives notice of amendments or modifications of the facility permit(s);

xi. the wording of the corporate guarantee shall be as specified in Subparagraph B.8.i of this Section.

b. A corporate guarantee may be used to satisfy the requirements of this Section only if the attorney general(s) or insurance commissioner(s) of the state in which the guarantor is incorporated, and the state in which the facility covered by the guarantee is located, has submitted a written statement to the Office of Management and Finance, Financial Services Division that a corporate guarantee is a legally valid and enforceable obligation in that state.

6. The use of a particular financial responsibility mechanism is subject to the approval of the administrative authority.

7. Permit holders of existing facilities must submit, on or before February 20, 1995, financial responsibility documentation that complies with the requirements of this

Subsection. Applicants for permits for new facilities must submit evidence of financial assurance in accordance with this Section at least 60 days before the date on which sewage sludge, other feedstock, or supplements are first received for processing.

B. Financial Responsibility for Closure and Post-Closure Care

1. Permit holders or applicants have the following financial responsibilities for closure and post-closure care.

a. Permit holders or applicants shall establish and maintain financial assurance for closure and post-closure care.

b. The applicant or permit holder shall submit to the Office of Management and Finance, Financial Services Division the estimated closure date and the estimated cost of closure and post-closure care in accordance with the following procedures.

i. The applicant or permit holder must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these rules. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.

ii. The applicant or permit holder of a facility subject to post-closure monitoring or maintenance requirements must have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the provisions of these rules. The estimate of post-closure costs is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required and shall be based on the cost of hiring a third party to conduct post-closure activities in accordance with the closure plan.

iii. The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business* or a reestimation of the closure and post-closure costs in accordance with Clauses B.1.b.i-ii of this Section. The permit holder or applicant must revise the cost estimate whenever a change in the closure/post-closure plans increases or decreases the cost of the closure plan. The permit holder or applicant must submit a written notice of any such adjustment to the Office of Management and Finance, Financial Services Division within 15 days following such adjustment.

iv. For trust funds, the first payment must be at least equal to the current closure and post-closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each annual anniversary of the date of the first payment. The amount of each subsequent payment must be determined by subtracting the current value of the trust fund from the current closure and post-closure cost estimates and dividing the result by the number of years remaining in the

pay-in period. The initial pay-in period is based on the estimated life of the facility.

2. Financial Assurance Mechanisms. The financial assurance mechanism must be one or a combination of the following: a trust fund, a financial guarantee bond ensuring closure funding, a performance bond, a letter of credit, an insurance policy, or the financial test. The financial assurance mechanism is subject to the approval of the administrative authority and must fulfill the following criteria.

a. Except when a financial test, trust fund, or certificate of insurance is used as the financial assurance mechanism, a standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the financial assurance mechanism into which the proceeds of such mechanism could be transferred should such funds be necessary for either closure or post-closure of the facility, and a signed copy must be furnished to the administrative authority with the mechanism.

b. A permit holder or applicant may use a financial assurance mechanism specified in this Section for more than one facility, if all such facilities are located within Louisiana and are specifically identified in the mechanism.

c. The amount covered by the financial assurance mechanism(s) must equal the total of the current closure and post-closure estimates for each facility covered.

d. When all closure and post-closure requirements have been satisfactorily completed, the administrative authority shall execute an approval to terminate the financial assurance mechanism(s).

3. Trust Funds. A permit holder or applicant may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally signed duplicate of the trust agreement to the Office of Management and Finance, Financial Services Division.

a. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

b. Trusts must be accomplished in accordance with and subject to the laws of Louisiana. The beneficiary of the trust shall be the administrative authority.

c. Trust-fund earnings may be used to offset required payments into the fund, to pay the fund trustee, or to pay other expenses of the funds, or may be reclaimed by the permit holder or applicant upon approval of the administrative authority.

d. The trust agreement must be accompanied by an affidavit certifying the authority of the individual signing the trust on behalf of the permit holder or applicant.

e. The permit holder or applicant may accelerate payments into the trust fund or deposit the full amount of the current closure cost estimate at the time the fund is established. The permit holder or applicant must, however, maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Clause B.1.b.iv of this Section.

f. If the permit holder or applicant establishes a trust fund after having used one or more of the alternate mechanisms specified in this Section, his first payment must be in at least the amount that the fund would contain if the

trust fund were established initially and annual payments made according to the specifications of this Paragraph.

g. After the pay-in period is completed, whenever the current cost estimate changes, the permit holder must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the permit holder or applicant, within 60 days after the change in the cost estimate, must either deposit an amount into the fund that will make its value at least equal to the amount of the closure/post-closure cost estimate or it must estimate or obtain other financial assurance as specified in this Section to cover the difference.

h. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and/or post-closure may request reimbursement for closure and/or post-closure expenditures by submitting itemized bills to the Office of Management and Finance, Financial Services Division. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure and/or post-closure expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure and/or post-closure will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the permit holder is no longer required to maintain financial assurance.

i. The wording of the trust agreement shall be identical to the wording in Document 4 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in Document 4 of Appendix R of this Chapter.

4. Surety Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Management and Finance, Financial Services Division.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and approved by the administrative authority.

b. The permit holder or applicant who uses a surety bond to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. The bond must guarantee that the operator will:

i. fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

ii. fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure or post-closure is issued; or

iii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after receipt by both the permit holder and the administrative authority of a notice of cancellation of the bond from the surety.

d. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond.

e. The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.

f. Whenever the current cost-estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure estimate and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the administrative authority.

g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the administrative authority. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts.

h. The wording of the surety bond guaranteeing payment into a standby trust fund shall be identical to the wording in Document 5 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

5. Performance Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Management and Finance, Financial Services Division.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and approved by the administrative authority.

b. The permit holder or applicant who uses a surety bond to satisfy the requirements of this Section must also provide to the administrative authority evidence of establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. The bond must guarantee that the permit holder or applicant will:

i. perform final closure and post-closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

ii. provide alternate financial assurance, as specified in this Section, and obtain the administrative

authority's written approval of the assurance provided within 90 days after the date both the permit holder and the administrative authority receive notice of cancellation of the bond from the surety.

d. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond. Following a determination by the administrative authority that the permit holder has failed to perform final closure and post-closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure and post-closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

e. The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.

f. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate after written approval of the administrative authority.

g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the Office of Management and Finance, Financial Services Division. Cancellation may not occur before 120 days have elapsed beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts.

h. The wording of the performance bond shall be identical to the wording in Document 6 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

6. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the Office of Management and Finance, Financial Services Division.

a. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the

letter of credit by number, issuing institution, and date, and providing the following information:

- i. agency interest number;
- ii. site name;
- iii. facility name;
- iv. facility permit number; and
- v. the amount of funds assured for closure and/or post closure of the facility by the letter of credit.

d. The letter of credit must be irrevocable and issued for a period of at least one year, unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and Office of Management and Finance, Financial Services Division by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority receive the notice, as evidenced by the return receipts.

e. The letter of credit must be issued in an amount at least equal to the current closure and post-closure cost estimates.

f. Whenever the current cost estimates increase to an amount greater than the amount of the credit, the permit holder, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure and post-closure cost estimates upon written approval of the administrative authority.

g. Following a determination by the administrative authority that the permit holder has failed to perform final closure or post-closure in accordance with the closure plan and other permit requirements when required to do so, the administrative authority may draw on the letter of credit.

h. The wording of the letter of credit shall be identical to the wording in Document 7 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

7. Insurance. A permit holder or applicant may satisfy the requirements of this Section by obtaining insurance that conforms to the following requirements and submitting a certificate of such insurance to the Office of Management and Finance, Financial Services Division.

a. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess- or surplus-lines insurer in one or more states, and authorized to transact insurance business in Louisiana.

b. The insurance policy must be issued for a face amount at least equal to the current closure and post-closure cost estimates.

c. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

d. The insurance policy must guarantee that funds will be available to close the facility and provide post-closure care once final closure occurs. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the administrative authority, to such party or parties as the administrative authority specifies.

e. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and post-closure may request reimbursement for closure or post-closure expenditures by submitting itemized bills to the Office of Management and Finance, Financial Services Division. Within 60 days after receiving such bills, the administrative authority will determine whether the expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the insurer to make reimbursement in such amounts as the administrative authority specifies in writing.

f. The permit holder must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the permit holder.

g. Each policy must contain a provision allowing assignment of the policy to a successor permit holder. Such assignment may be conditional upon consent of the insurer, provided consent is not unreasonably refused.

h. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the permit holder and the Office of Management and Finance, Financial Services Division. Cancellation, termination, or failure to renew may not occur, however, before 120 days have elapsed, beginning on the date that both the administrative authority and the permit holder receive notice of cancellation, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration:

- i. the administrative authority deems the facility abandoned;
- ii. the permit is terminated or revoked or a new permit is denied;
- iii. closure and/or post-closure is ordered;
- iv. the permit holder is named as debtor in a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code; or
- v. the premium due is paid.

i. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the permit holder, within 60 days after the increase, must either increase the face amount to at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current closure

and post-closure cost estimates following written approval by the administrative authority.

j. The wording of the certificate of insurance shall be identical to the wording in Document 8 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

8. Financial Test. A permit holder, applicant, or parent corporation of the permit holder or applicant, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that he or she passes a financial test as specified in this Paragraph. The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as outlined in Paragraph A.5 of this Section.

a. To pass this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must meet either of the following criteria:

i. the permit holder, applicant, or parent corporation of the permit holder or applicant must have:

(a). tangible net worth of at least six times the sum of the current closure and post-closure estimates to be demonstrated by this test and the amount of liability coverage to be demonstrated by this test;

(b). tangible net worth of at least \$10 million; and

(c). assets in the United States amounting to either at least 90 percent of his total assets, or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test; or

ii. the permit holder, applicant, or parent corporation of the permit holder or applicant must have:

(a). a current rating for his most recent bond issuance of AAA, AA, A, or BBB, as issued by *Standard and Poor's*, or Aaa, Aa, or Baa, as issued by *Moody's*;

(b). tangible net worth of at least \$10 million; and

(c). assets in the United States amounting to either 90 percent of his total assets or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test.

b. To demonstrate that he or she meets this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must submit the following three items to the Office of Management and Finance, Financial Services Division:

i. a letter signed by the chief financial officer of the permit holder, applicant, or parent corporation demonstrating and certifying the criteria in Subparagraph B.8.a of this Section and including the information required by Subparagraph B.8.d of this Section. If the financial test is provided to demonstrate both assurance for closure and/or post-closure care and liability coverage, a single letter to cover both forms of financial responsibility is required;

ii. a copy of the independent certified public accountant (CPA)'s report on the financial statements of the permit holder, applicant, or parent corporation of the permit holder or applicant for the latest completed fiscal year; and

iii. a special report from the independent CPA to the permit holder, applicant, or parent corporation of the permit holder or applicant stating that:

(a). the CPA has computed the data specified by the chief financial officer as having been derived from the independently audited, year-end financial statements with the amounts for the latest fiscal year in such financial statements; and

(b). in connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.

c. The administrative authority may disallow use of this test on the basis of the opinion expressed by the independent CPA in his report on qualifications based on the financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. The administrative authority may disallow the use of this test on the basis of the accessibility of the assets of the parent corporation (corporate guarantor), permit holder, or applicant. The permit holder, applicant, or parent corporation must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.

d. The permit holder, applicant, or parent corporation (if a corporate guarantor) of the permit holder or applicant shall provide to the Office of Management and Finance, Financial Services Division a letter from the chief financial officer, the wording of which shall be identical to the wording in Document 9 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The letter shall certify the following information:

i. a list of commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant of the facility, for which financial assurance for liability coverage is demonstrated through the use of financial tests, including the amount of liability coverage;

ii. a list of commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant, for which financial assurance for the closure or post-closure care is demonstrated through the use of a financial test or self-insurance by the permit holder or applicant, including the cost estimates for the closure and post-closure care of each facility;

iii. a list of the commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, owned or operated by any subsidiaries of the parent corporation for which financial assurance for closure and/or post-closure is demonstrated through the financial test or through use of self-insurance, including the current cost estimate for the closure or post-closure care for each facility and the amount of annual aggregate liability coverage for each facility; and

iv. a list of commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for closure or post-closure care is not demonstrated through the financial test, self-insurance, or other substantially equivalent state

mechanisms, including the estimated cost of closure and post-closure of such facilities.

e. For the purposes of this Subsection the phrase "tangible net worth" shall mean the tangible assets that remain after liabilities have been deducted; such assets would not include intangibles such as good will and rights to patents or royalties.

f. The phrase "current closure and post-closure cost estimates," as used in Subparagraph B.8.a of this Section, includes the cost estimates required to be shown in Subclause B.8.a.i.(a) of this Section.

g. After initial submission of the items specified in Subparagraph B.8.b of this Section, the permit holder, applicant, or parent corporation of the permit holder or applicant must send updated information to the Office of Management and Finance, Financial Services Division within 90 days after the close of each succeeding fiscal year. This information must include all three items specified in Subparagraph B.8.b of this Section.

h. The administrative authority may, on the basis of a reasonable belief that the permit holder, applicant, or parent corporation of the permit holder or applicant may no longer meet the requirements of Paragraph B.8 of this Section, require reports of financial condition at any time in addition to those specified in Subparagraph B.8.b of this Section. If the administrative authority finds, on the basis of such reports or other information, that the permit holder, applicant, or parent corporation of the permit holder or applicant no longer meets the requirements of Subparagraph B.8.b of this Section, the permit holder or applicant, or parent corporation of the permit holder or applicant must provide alternate financial assurance as specified in this Subsection within 30 days after notification of such a finding.

i. A permit holder or applicant may meet the requirements of Paragraph B.8 of this Section for closure and/or post-closure by obtaining a written guarantee, hereafter referred to as a "corporate guarantee." The guarantor must be the parent corporation of the permit holder or applicant. The guarantor must meet the requirements and submit all information required for permit holders or applicants in Subparagraphs B.8.a-h of this Section and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subparagraphs B.8.b and d of this Section. The wording of the corporate guarantee must be identical to the wording in Document 10 of Appendix R of this Chapter, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. The terms of the corporate guarantee must be in an authentic act signed and sworn by an authorized officer of the corporation before a notary public and must provide that:

i. the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Paragraph B.8 of this Section;

ii. the guarantor is the parent corporation of the permit holder or applicant of the commercial blender, composter, or mixer of sewage sludge facility or facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

iii. "closure plans," as used in the guarantee, refers to the plans maintained as required by the Louisiana commercial blender, composter, or mixer of sewage sludge rules and regulations for the closure and post-closure care of facilities, as identified in the guarantee;

iv. for value received from the permit holder or applicant, the guarantor guarantees to the Louisiana Department of Environmental Quality that the permit holder or applicant will perform closure, post-closure care, or closure and post-closure care of the facility or facilities listed in the guarantee, in accordance with the closure plan and other permit or regulatory requirements whenever required to do so. In the event that the permit holder or applicant fails to perform as specified in the closure plan, the guarantor shall do so or establish a trust fund as specified in Paragraph B.3 of this Section, in the name of the permit holder or applicant, in the amount of the current closure or post-closure cost estimates or as specified in Subparagraph B.1.b of this Section;

v. guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days after the end of the fiscal year, by certified mail, notice to the Office of Management and Finance, Financial Services Division and to the permit holder or applicant that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the permit holder or applicant has done so;

vi. the guarantor agrees to notify the Office of Management and Finance, Financial Services Division by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

vii. the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant, unless the permit holder or applicant has done so;

viii. the guarantor agrees to remain bound under the guarantee, notwithstanding any or all of the following: amendment or modification of the closure plan, amendment or modification of the permit, extension or reduction of the time of performance of closure or post closure, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;

ix. the guarantor agrees to remain bound under the guarantee for as long as the permit holder must comply with the applicable financial assurance requirements of this Subsection for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the Office of Management and Finance, Financial Services Division and the permit holder or applicant. The cancellation will become effective no earlier than 90 days after receipt of such notice by both the

administrative authority and the permit holder or applicant, as evidenced by the return receipts;

x. the guarantor agrees that if the permit holder or applicant fails to provide alternative financial assurance as specified in this Subsection, and to obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the owner or operator; and

xi. the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit(s).

9. Local Government Financial Test. An owner or operator that satisfies the requirements of Subparagraphs B.9.a-c of this Section may demonstrate financial assurance up to the amount specified in Subparagraph B.9.d of this Section.

a. Financial Component

i. The owner or operator must satisfy the following conditions, as applicable:

(a). if the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's*, on all such general obligation bonds; or

(b). the owner or operator must satisfy the ratio of cash plus marketable securities to total expenditures being greater than or equal to 0.05 and the ratio of annual debt service to total expenditures less than or equal to 0.20 based on the owner or operator's most recent audited annual financial statement.

ii. The owner or operator must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have his financial statements audited by an independent certified public accountant (or appropriate state agency).

iii. A local government is not eligible to assure its obligations under Paragraph B.9 of this Section if it:

(a). is currently in default on any outstanding general obligation bonds;

(b). has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*;

(c). operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

(d). receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement as required under Clause B.9.a.ii of this Section. The administrative authority may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the administrative authority deems the qualification insufficient to warrant disallowance of use of the test.

iv. The following terms used in this Subsection are defined as follows.

(a). *Deficit*—total annual revenues minus total annual expenditures.

(b). *Total Revenues*—revenues from all taxes and fees, but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party.

(c). *Total Expenditures*—all expenditures, excluding capital outlays and debt repayment.

(d). *Cash Plus Marketable Securities*—all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(e). *Debt Service*—the amount of principal and interest due on a loan in a given time period, typically the current year.

b. Public Notice Component. The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. For closure and post-closure costs, conformance with *Government Accounting Standards Board Statement 18* assures compliance with this public notice component.

c. Recordkeeping and Reporting Requirements

i. The local government owner or operator must place the following items in the facility's operating record:

(a). a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in Subparagraph B.9.d of this Section. It must provide evidence that the local government meets the conditions of Clauses B.9.a.i-iii of this Section, and certify that the local government meets the conditions of Clauses B.9.a.i-iii and Subparagraphs B.9.b and d of this Section;

(b). the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years and unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(c). a report to the local government from the local government's independent certified public accountant or the appropriate state agency based on performing an agreed upon procedures engagement relative to the financial ratios required by Subclause B.9.a.i.(b) of this Section, if applicable, and the requirements of Clause B.9.a.ii and Subclauses B.9.a.iii.(c)-(d) of this Section. The certified public accountant or state agency's report should state the procedures performed and the certified public accountant or state agency's findings; and

(d). a copy of the comprehensive annual financial report (CAFR) used to comply with Subparagraph



B.9.b of this Section (certification that the requirements of *General Accounting Standards Board Statement 18* have been met).

ii. The items required in Clause B.9.c.i of this Section must be placed in the facility operating record, in the case of closure and post-closure care, either before the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later.

iii. After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

iv. The local government owner or operator is no longer required to meet the requirements of Subparagraph B.9.c of this Section when:

(a). the owner or operator substitutes alternate financial assurance, as specified in this Section; or

(b). the owner or operator is released from the requirements of this Section in accordance with Subsection A or B of this Section.

v. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the Office of Management and Finance, Financial Services Division that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

vi. The administrative authority, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the administrative authority finds, on the basis of such reports or other information, that the owner or operator no longer meets the local government financial test, the local government must provide alternate financial assurance in accordance with this Section.

d. Calculation of Costs to be Assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under Paragraph B.9 of this Section is determined as follows:

i. if the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue; or

ii. if the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, or corresponding state programs, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure

under Paragraph B.9 of this Section. The total that may be assured must not exceed 43 percent of the local government's total annual revenue; and

iii. the owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in Clauses B.9.d.i - ii of this Section.

10. Local Government Guarantee. An owner or operator may demonstrate financial assurance for closure and post-closure, as required by Subsections A and B of this Section, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in Paragraph B.9 of this Section, and must comply with the terms of a written guarantee.

a. Terms of the Written Guarantee. The guarantee must be effective before the initial receipt of sewage sludge, other feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure and post-closure care. The guarantee must provide that:

i. if the owner or operator fails to perform closure and post-closure care, of a facility covered by the guarantee, the guarantor will:

(a). perform, or pay a third party to perform, closure and post-closure care as required; or

(b). establish a fully funded trust fund as specified in Paragraph B.3 of this Section in the name of the owner or operator;

ii. the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Office of Management and Finance, Financial Services Division. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts; and

iii. if a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Office of Management and Finance, Financial Services Division. If the owner or operator fails to provide alternate financial assurance within the 90-day period, then the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the Office of Management and Finance, Financial Services Division.

b. Recordkeeping and Reporting

i. The owner or operator must place a certified copy of the guarantee, along with the items required under Subparagraph B.9.c of this Section, into the facility's operating record before the initial receipt of sewage sludge, other feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure or post-closure care.

ii. The owner or operator is no longer required to maintain the items specified in Clause B.10.b.i of this Section when:

(a). the owner or operator substitutes alternate financial assurance as specified in this Section; or

(b). the owner or operator is released from the requirements of this Section in accordance with Subsections A and B of this Section.

iii. If a local government guarantor no longer meets the requirements of Paragraph B.9 of this Section, the owner or operator must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the Office of Management and Finance, Financial Services Division. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

11. Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Subsections A and B of this Section, by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in Paragraphs B.3-8 of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

12. Discounting. The administrative authority may allow discounting of closure and post-closure cost estimates in this Subsection up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

a. the administrative authority determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer to the Office of Management and Finance, Financial Services Division so stating;

b. the state finds the facility in compliance with applicable and appropriate permit conditions;

c. the administrative authority determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

d. discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:796 (April 2002).

### **§3111. Pathogens and Vector Attraction Reduction**

A. Scope. This Section contains the following:

1. the requirements for a sewage sludge to be classified either *Exceptional Quality* or Class B with respect to pathogens;

2. the site restrictions for land on which a Class B sewage sludge is applied;

3. the pathogen requirements for domestic septage applied to agricultural land, forest, or a reclamation site; and

4. alternative vector attraction reduction requirements for sewage sludge that is applied to the land.

B. Special Definitions. In addition to the terms referenced and defined at LAC 33:IX.3101.H, the following definitions apply to this Section:

*Aerobic Digestion*—the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

*Anaerobic Digestion*—the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

*Density of Microorganisms*—the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

*Land With a High Potential for Public Exposure*—land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

*Land With a Low Potential for Public Exposure*—land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

*Pathogenic Organisms*—disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

*pH*—the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° C or measured at another temperature and then converted to an equivalent value at 25° C.

*Specific Oxygen Uptake Rate (SOUR)*—the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

*Total Solids*—the materials in sewage sludge that remain as residue when the sewage sludge is dried to a constant weight at 103° to 105° C.

*Unstabilized Solids*—organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

*Vector Attraction*—the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

*Volatile Solids*—the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550° C in the presence of excess air.

#### C. Pathogens

##### 1. Sewage SludgeCExceptional Quality

a. The requirement in Subparagraph C.1.b of this Section and the requirements in either Subparagraph C.1.c, d, e, f, g, or h of this Section shall be met for a sewage sludge to be classified *Exceptional Quality* with respect to pathogens.

b. The Exceptional Quality pathogen requirements in Subparagraphs C.1.c-h of this Section shall be met either prior to meeting or at the same time the vector attraction reduction requirements in Subsection D of this Section, except the vector attraction reduction requirements in Subparagraphs D.2.f-h of this Section, are met.

##### c. Exceptional QualityCAAlternative 1

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is

prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

ii. The temperature of the sewage sludge that is used or disposed shall be maintained at a specific value for a period of time.

(a). When the percent solids of the sewage sludge is 7 percent or higher, the temperature of the sewage sludge shall be 50° C or higher, the time period shall be 20 minutes or longer, and the temperature and time period shall be determined using equation (2), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

$$D = \frac{131,700,000}{10^{0.1400t}} \quad \text{Equation (2)}$$

Where:

D = time in days.

t = temperature in degrees Celsius.

(b). When the percent solids of the sewage sludge is 7 percent or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50° C or higher, the time period shall be 15 seconds or longer, and the temperature and time period shall be determined using equation (2).

(c). When the percent solids of the sewage sludge is less than 7 percent and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation (2).

(d). When the percent solids of the sewage sludge is less than 7 percent, the temperature of the sewage sludge is 50° C or higher, and the time period is 30 minutes or longer, the temperature and time period shall be determined using equation (3).

$$D = \frac{50,070,000}{10^{0.1400t}} \quad \text{Equation (3)}$$

Where:

D = time in days.

t = temperature in degrees Celsius.

d. **Exceptional Quality Alternative 2**

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

ii.(a). The pH of the sewage sludge that is used or disposed shall be raised to above 12 and shall remain above 12 for 72 hours.

(b). The temperature of the sewage sludge shall be above 52° C for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(c). At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50 percent.

e. **Exceptional Quality Alternative 3**

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

ii.(a). The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(b). When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is *Exceptional Quality* with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(c). When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is *Exceptional Quality* with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(d). After the enteric virus reduction in Subclause C.1.e.ii.(c) of this Section is demonstrated for the pathogen treatment process, the sewage sludge continues to be *Exceptional Quality* with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in Subclause C.1.e.ii.(c) of this Section.

iii.(a). The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(b). When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is *Exceptional Quality* with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(c). When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is *Exceptional Quality* with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less

than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(d). After the viable helminth ova reduction in Subclause C.1.e.iii.(c) of this Section is demonstrated for the pathogen treatment process, the sewage sludge continues to be *Exceptional Quality* with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in Subclause C.1.e.iii.(c) of this Section.

f. Exceptional Quality C Alternative 4

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

ii. The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in LAC 33:IX.3103.A.2.a and 3.a, unless otherwise specified by the permitting authority.

iii. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

g. Exceptional Quality C Alternative 5

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

ii. Sewage sludge that is used or disposed shall be treated in one of the Processes to Further Reduce Pathogens described in Appendix Q of this Chapter.

h. Exceptional Quality C Alternative 6

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

ii. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a Process to Further Reduce Pathogens, as determined by the permitting authority.

2. Sewage Sludge C Class B

a.i. The requirements in either of Subparagraph C.2.b, c, or d of this Section shall be met for a sewage sludge to be classified Class B with respect to pathogens.

ii. The site restrictions in Subparagraph C.2.e of this Section shall be met when sewage sludge that meets the Class B pathogen requirements in Subparagraph C.2.b, c, or d of this Section is applied to the land.

b. Class B C Alternative 1

i. Seven representative samples of the sewage sludge that is used or disposed shall be collected.

ii. The geometric mean of the density of fecal coliform in the samples required by Clause C.2.b.i of this Section shall be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

c. Class B C Alternative 2. Sewage sludge that is used or disposed shall be treated in one of the Processes to Significantly Reduce Pathogens described in Appendix Q of this Chapter.

d. Class B C Alternative 3. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a Process to Significantly Reduce Pathogens, as determined by the permitting authority.

e. Site Restrictions

i. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.

ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four months or longer prior to incorporation into the soil.

iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than four months prior to incorporation into the soil.

iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.

v. Animals shall not be grazed on the land for 30 days after application of sewage sludge.

vi. Turf grown on land where sewage sludge is applied shall not be harvested for one year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the permitting authority.

vii. Public access to land with a high potential for public exposure shall be restricted for one year after application of sewage sludge, by means approved by the administrative authority.

viii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge, by means approved by the administrative authority.

3. Domestic Septage. For domestic septage applied to agricultural land, forest, or a reclamation site:

a. the site restrictions in Subparagraph C.2.e of this Section shall be met; or

b. the pH of the domestic septage shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 30 minutes and the site restrictions in Clauses C.2.e.i - iv of this Section shall be met.

#### D. Vector Attraction Reduction

1.a. One of the vector attraction reduction requirements in Subparagraphs D.2.a - j of this Section shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in Subparagraphs D.2.a - h of this Section shall be met when bulk sewage sludge is applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in Subparagraphs D.2.a - h of this Section shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

d. One of the vector attraction reduction requirements in Subparagraph D.2.i, j, or k of this Section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

2.a. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38 percent (see calculation procedures in *Environmental Regulations and Technology - Control of Pathogens and Vector Attraction in Sewage Sludge*, EPA-625/R-92/013, 1992, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268).

b. When the 38 percent volatile solids reduction requirement in Subparagraph D.2.a of this Section cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37° C. When at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17 percent, vector attraction reduction is achieved.

c. When the 38 percent volatile solids reduction requirement in Subparagraph D.2.a of this Section cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2 percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20°

C. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15 percent, vector attraction reduction is achieved.

d. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° C.

e. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40° C and the average temperature of the sewage sludge shall be higher than 45° C.

f. The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

g. The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75 percent based on the moisture content and total solids prior to mixing with other materials.

h. The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90 percent based on the moisture content and total solids prior to mixing with other materials.

i.i. Sewage sludge shall be injected below the surface of the land.

ii. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

iii. When the sewage sludge that is injected below the surface of the land is *Exceptional Quality* with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

j.i. Sewage sludge applied to the land surface shall be incorporated into the soil within six hours after application to the land, unless otherwise specified by the permitting authority.

ii. When sewage sludge that is incorporated into the soil is *Exceptional Quality* with respect to pathogens, the sewage sludge shall be applied to the land within eight hours after being discharged from the pathogen treatment process.

k. The pH of domestic septage shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 30 minutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:806 (April 2002).

### §3113. Incineration

#### A. Applicability

1. This Section applies to a person who fires only sewage sludge or sewage sludge and auxiliary fuel, as defined in Subsection B of this Section, in a sewage sludge incinerator, to a sewage sludge incinerator, as defined in Subsection B of this Section, and to sewage sludge or sewage sludge and auxiliary fuel fired in a sewage sludge incinerator.

2. This Section applies to the exit gas from a sewage sludge incinerator stack.

B. Special Definitions. All terms not defined below shall have the meaning given them in LAC 33:IX.3101.H and in LAC 33:III.111.

*Air Pollution Control Device*—one or more processes used to treat the exit gas from a sewage sludge incinerator stack.

*Auxiliary Fuel*—fuel used to augment the fuel value of sewage sludge. This includes, but is not limited to, natural gas, fuel oil, coal, gas generated during anaerobic digestion of sewage sludge, and municipal solid waste (not to exceed 30 percent of the dry weight of sewage sludge and auxiliary fuel together). Hazardous wastes are not auxiliary fuel.

*Average Daily Concentration*—the arithmetic mean of the concentration of a pollutant in milligrams per kilogram of sewage sludge (dry weight basis) in the samples collected and analyzed in a month.

*Control Efficiency*—the mass of a pollutant in the sewage sludge fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack divided by the mass of the pollutant in the sewage sludge fed to the incinerator.

*Dispersion Factor*—the ratio of the increase in the ground level ambient air concentration for a pollutant at or beyond the property line of the site where the sewage sludge incinerator is located to the mass emission rate for the pollutant from the incinerator stack.

*Fluidized Bed Incinerator*—an enclosed device in which organic matter and inorganic matter in sewage sludge are combusted in a bed of particles suspended in the combustion chamber gas.

*Hourly Average*—the arithmetic mean of all measurements, taken during an hour. At least two measurements must be taken during the hour.

*Incineration*—the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

*Incinerator Operating Combustion Temperature*—the arithmetic mean of the temperature readings in the hottest zone of the furnace recorded in a day (24 hours) when the temperature is averaged and recorded at least hourly during the hours the incinerator operates in a day.

*Monthly Average*—the arithmetic mean of the hourly averages for the hours a sewage sludge incinerator operates during the month.

*Performance Test Combustion Temperature*—the arithmetic mean of the average combustion temperature in the hottest zone of the furnace for each of the runs in a performance test.

*Risk Specific Concentration*—the allowable increase in the average daily ground level ambient air concentration for a pollutant from the incineration of sewage sludge at or beyond the property line of the site where the sewage sludge incinerator is located.

*Sewage Sludge Feed Rate*—either the average daily amount of sewage sludge fired in all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located for the number of days in a 365-day period that each sewage sludge incinerator operates, or the average daily design capacity for all sewage

sludge incinerators within the property line of the site where the sewage sludge incinerators are located.

*Sewage Sludge Incinerator*—an enclosed device in which only sewage sludge or sewage sludge and auxiliary fuel are fired.

*Stack Height*—the difference between the elevation of the top of a sewage sludge incinerator stack and the elevation of the ground at the base of the stack when the difference is equal to or less than 214 feet (65 meters). When the difference is greater than 214 feet (65 meters), stack height is the creditable stack height determined in accordance with LAC 33:III.921.

*Standard*—a standard of performance proposed or promulgated under this Subchapter.

*Stationary Source*—any building, structure, facility, or installation that emits or may emit any air pollutant.

*Total Hydrocarbons*—the organic compounds in the exit gas from a sewage sludge incinerator stack measured using a flame ionization detection instrument referenced to propane.

*Wet Electrostatic Precipitator*—an air pollution control device that uses both electrical forces and water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

*Wet Scrubber*—an air pollution control device that uses water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

### C. General Requirements

1. No person shall fire sewage sludge or sewage sludge and auxiliary fuel in a sewage sludge incinerator except in compliance with the requirements in this Section.

#### 2. Performance Tests for New Stationary Sources

a. Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of such facility and at such other times as may be required by the state administrative authority, the owner or operator of such facility shall conduct performance test(s) and furnish the state administrative authority a written report of the results of such performance test(s).

b. Performance tests shall be conducted and data reduced in accordance with the test methods and procedures contained for each applicable requirement in Subsections D, E, and F of this Section, unless the state administrative authority:

i. specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

ii. approves the use of an equivalent method;

iii. approves the use of an alternative method the results of which have been determined by the state administrative authority to be adequate for indicating whether a specific source is in compliance;

iv. waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means, to the state administrative authority's satisfaction, that the affected facility is in compliance with the standard; or

v. approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this Subparagraph shall be construed to abrogate the state administrative authority's right to require additional testing if deemed necessary for

proper determination of the standard of performance of the new stationary source.

c. Performance tests shall be conducted under such conditions as the state administrative authority shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the state administrative authority such records as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of start-up, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

d. The owner or operator of an affected facility shall provide the state administrative authority at least 30 days prior notice of any performance test, except as otherwise specified in this Subsection, to afford the state administrative authority the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the state administrative authority as soon as possible of any delay in the original test date either by providing at least seven days prior notice of the rescheduled date of the performance test or by arranging a rescheduled date with the state administrative authority by mutual agreement.

e. The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

i. sampling ports adequate for test methods applicable to such facility, including:

(a). constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(b). providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

ii. safe sampling platform(s);

iii. safe access to sampling platform(s); and

iv. utilities for sampling and testing equipment.

f. Unless otherwise specified in the applicable parts of this Paragraph, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the state administrative authority's approval, be determined using the arithmetic mean of the results of the two other runs.

3. In conducting the performance tests required in Paragraph C.2 of this Section, the owner or operator shall use as reference methods and procedures the test methods referenced in LAC 33:IX.3101.G or other methods and procedures as specified in this Section, except as provided for in Subparagraph C.2.b of this Section.

4.a. The owner or operator of any sewage sludge incinerator subject to the provisions of this Subchapter shall conduct a performance test during which the monitoring and recording devices required under Paragraphs F.2, 4, and 6, Subparagraph F.8.a, and Paragraph F.9 of this Section are installed and operating and for which the sampling and analysis procedures required under Subparagraph G.1.d of this Section are performed as follows:

i. for incinerators that commenced construction or modification on or before April 18, 1986, the performance test shall be conducted within 360 days of the effective date of these regulations, unless the monitoring and recording devices required under Paragraphs F.2, 4, and 6, Subparagraph F.8.a, and Paragraph F.9 of this Section were installed and operating and the sampling and analysis procedures required under Subparagraph G.1.d of this Section were performed during the most recent performance test and a record of the measurements taken during the performance test is available for review by the state administrative authority; and

ii. for incinerators that commence construction or modification on or after the effective date of these regulations, the date of the performance test shall be determined by the requirements in Paragraph C.2 of this Section.

b. The owner or operator shall provide the state administrative authority at least 30 days prior notice of the performance test to afford the state administrative authority the opportunity to have an observer present.

5. The owner or operator of any sewage sludge incinerator, other than a multiple hearth, fluidized bed, or electric incinerator or any sewage sludge incinerator equipped with a control device other than a wet scrubber, shall submit a plan to the state administrative authority for approval for monitoring and recording incinerator and control device operation parameters. The plan shall be submitted to the state administrative authority as follows:

a. no later than 90 days after October 6, 1988, for sources that have provided notification of commencement of construction prior to October 6, 1988;

b. no later than 90 days after the notification of commencement of construction, for sources that provide notification of commencement of construction on or after October 6, 1988; and

c. at least 90 days prior to the date on which the new control device becomes operative for sources switching to a control device other than a wet scrubber.

#### D. Pollutant Limits

1. Firing of sewage sludge in a sewage sludge incinerator shall not violate the requirements in the national emission standard for beryllium in Subpart C of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116).

2. Firing of sewage sludge in a sewage sludge incinerator shall not violate the requirements in the national emission standard for mercury in Subpart E of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116).

3. Pollutant Limit **C**Lead

a. The average daily concentration for lead in sewage sludge fed to a sewage sludge incinerator shall not exceed the concentration calculated using Equation (4).

$$C = \frac{0.1 \times NAAQS \times 86,400}{DF \times (1 - CE) \times SF} \quad \text{Equation (4)}$$

Where:

C = average daily concentration of lead in sewage sludge.

NAAQS = national Ambient Air Quality Standard for lead in micrograms per cubic meter.

DF = dispersion factor in micrograms per cubic meter per gram per second.

CE = sewage sludge incinerator control efficiency for lead in hundredths.

SF = sewage sludge feed rate in metric tons per day (dry weight basis).

b. The dispersion factor (DF) in equation (4) shall be determined from an air dispersion model in accordance with Paragraph D.5 of this Section.

i. When the sewage sludge stack height is 214 feet (65 meters) or less, the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for Equation (4).

ii. When the sewage sludge incinerator stack height exceeds 214 feet (65 meters), the creditable stack height shall be determined in accordance with LAC 33:III.921 and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (4).

c. The control efficiency (CE) for Equation (4) shall be determined from a performance test of the sewage sludge incinerator in accordance with Paragraph D.5 of this Section.

4. Pollutant Limit **C**Arsenic, Cadmium, Chromium, and Nickel

a. The average daily concentration for arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator each shall not exceed the concentration calculated using Equation (5).

$$C = \frac{RSC \times 86,400}{DF \times (1 - CE) \times SF} \quad \text{Equation (5)}$$

Where:

C = average daily concentration of arsenic, cadmium, chromium, or nickel in sewage sludge.

CE = sewage sludge incinerator control efficiency for arsenic, cadmium, chromium, or nickel in hundredths.

DF = dispersion factor in micrograms per cubic meter per gram per second.

RSC = risk specific concentration for arsenic, cadmium, chromium, or nickel in micrograms per cubic meter.

SF = sewage sludge feed rate in metric tons per day (dry weight basis).

b. The risk specific concentrations for arsenic, cadmium, and nickel used in Equation (5) shall be obtained from Table 1 of LAC 33:IX.3113.D.

Table 1 of LAC 33:IX.3113.D	
Risk Specific Concentration for Arsenic, Cadmium, and Nickel	
Pollutant	Risk Specific Concentration (micrograms per cubic meter)
Arsenic	0.023
Cadmium	0.057
Nickel	2.0

c. The risk specific concentration for chromium used in Equation (5) shall be obtained from Table 2 of LAC 33:IX.3113.D or shall be calculated using Equation (6).

Table 2 of LAC 33:IX.3113.D	
Risk Specific Concentration For Chromium	
Type of Incinerator	Risk Specific Concentration (micrograms per cubic meter)
Fluidized bed with wet scrubber	0.65
Fluidized bed with wet scrubber and wet electrostatic precipitator	0.23
Other types with wet scrubber	0.064
Other types with wet scrubber and wet electrostatic precipitator	0.016

$$RSC = \frac{0.0085}{r} \quad \text{Equation (6)}$$

Where:

RSC = risk specific concentration for chromium in micrograms per cubic meter used in equation (5).

r = decimal fraction of the hexavalent chromium concentration in the total chromium concentration measured in the exit gas from the sewage sludge incinerator stack in hundredths.

d. The dispersion factor (DF) in Equation (5) shall be determined from an air dispersion model in accordance with Paragraph D.5 of this Section.

i. When the sewage sludge incinerator stack height is equal to or less than 214 feet (65 meters), the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for Equation (5).

ii. When the sewage sludge incinerator stack height is greater than 214 feet (65 meters), the creditable stack height shall be determined in accordance with LAC 33:III.921 and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for Equation (5).

e. The control efficiency (CE) for Equation (5) shall be determined from a performance test of the sewage sludge incinerator in accordance with Paragraph D.5 of this Section.

5. Air Dispersion Modeling and Performance Testing

a. The air dispersion model used to determine the dispersion factor in Subparagraphs D.3.b and 4.d of this Section shall be appropriate for the geographical, physical, and population characteristics at the sewage sludge incinerator site. The performance test used to determine the control efficiencies in Subparagraphs D.3.c and 4.e of this Section shall be appropriate for the type of sewage sludge incinerator.

b. For air dispersion modeling initiated after September 3, 1999, the modeling results shall be submitted to the state administrative authority 30 days after completion of the modeling. In addition to the modeling results, the submission shall include a description of the air dispersion model and the values used for the model parameters.

c. The following procedures, at a minimum, shall apply in conducting performance tests to determine the control efficiencies in Subparagraphs D.3.c and 4.e of this Section after September 3, 1999:



i. the performance test shall be conducted under representative sewage sludge incinerator conditions at the highest expected sewage sludge feed rate within the design capacity of the sewage sludge incinerator;

ii. the state administrative authority shall be notified at least 30 days prior to any performance test so the state administrative authority may have the opportunity to observe the test. The notice shall include a test protocol with incinerator operating conditions and a list of test methods to be used; and

iii. each performance test shall consist of three separate runs using the applicable test method. The control efficiency for a pollutant shall be the arithmetic mean of the control efficiencies for the pollutant from the three runs.

d. The pollutant limits in Paragraphs D.3 and 4 of this Section shall be submitted to the state administrative authority no later than 30 days after completion of the air dispersion modeling and performance test.

e. Significant changes in geographic or physical characteristics at the incinerator site or in incinerator operating conditions require new air dispersion modeling or performance testing to determine a new dispersion factor or a new control efficiency that will be used to calculate revised pollutant limits.

6. Standards for Particulate Matter

a. No owner or operator of any sewage sludge incinerator subject to the provisions of this Section shall discharge or cause the discharge into the atmosphere of:

i. particulate matter at a rate in excess of 0.65 g/kg dry sewage sludge input (1.30 lb/ton dry sewage sludge input); and

ii. any gases that exhibit 20 percent opacity or greater.

b. The owner or operator of a sewage sludge incinerator shall determine compliance with the particulate matter emission standards in Subparagraph D.6.a of this Section as follows:

i. the emission rate (E) of particulate matter for each run shall be computed using the following equation:

$$E = K(C_s Q_{sd})/S$$

where:

E = emission rate of particulate matter, g/kg (lb/ton) of dry sewage sludge input.

C<sub>s</sub> = concentration of particulate matter, g/dscm (g/dscf).

Q<sub>sd</sub> = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

S = charging rate of dry sewage sludge during the run, kg/hr (lb/hr).

K = conversion factor, 1.0 g/g [4.409 lb<sup>2</sup>/(g-ton)];

ii. method 5 shall be used to determine the particulate matter concentration (C<sub>s</sub>) and the volumetric flow rate (Q<sub>sd</sub>) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf);

iii. the dry sewage sludge charging rate (S) for each run shall be computed using either of the following equations:

$$S = K_m S_m R_{dm} / \Theta$$

$$S = K_v S_v R_{dv} / \Theta$$

where:

S = charging rate of dry sewage sludge, kg/hr (lb/hr).

S<sub>m</sub> = total mass of sewage sludge charged, kg (lb).

R<sub>dm</sub> = average mass of dry sewage sludge per unit mass of sludge charged, mg/mg (lb/lb).

Θ = duration of run, in minutes.

K<sub>m</sub> = conversion factor, 60 min/hr.

S<sub>v</sub> = total volume of sewage sludge charged, m<sup>3</sup> (gal).

R<sub>dv</sub> = average mass of dry sewage sludge per unit volume of sewage charged, mg/liter (lb/ft<sup>3</sup>).

K<sub>v</sub> = conversion factor, 60 X 10<sup>3</sup> (liter-kg-min)/(m<sup>3</sup>-mg-hr) [8.021 (ft<sup>3</sup>-min)/(gal-hr)].

iv. the flow measuring device of Paragraph F.2 of this Section shall be used to determine the total mass (S<sub>m</sub>) or volume (S<sub>v</sub>) of sewage sludge charged to the incinerator during each run. If the flow measuring device is on a time rate basis, readings shall be taken and recorded at 5-minute intervals during the run and the total charge of sewage sludge shall be computed using the following equations, as applicable:

$$S_m = \sum_{i=1}^n Q_{mi} / \Theta_i$$

$$S_v = \sum_{i=1}^n Q_{vi} / \Theta_i$$

where:

Q<sub>mi</sub> = average mass flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", kg/min (gal/min).

Q<sub>vi</sub> = average volume flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", m<sup>3</sup>/min (gal/min).

Θ<sub>i</sub> = duration of interval "i", min;

v. samples of the sewage sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends, and "209 F. Method for Solid and Semisolid Samples" (40 CFR 60.17, incorporated by reference in LAC 33:III.3003) shall be used to determine dry sewage sludge content of each sample (total solids residue), except that:

(a). evaporating dishes shall be ignited to at least 103°C rather than the 550°C specified in step 3(a)(1);

(b). determination of volatile residue, step 3(b) may be deleted;

(c). the quantity of dry sewage sludge per unit sewage sludge charged shall be determined in terms of mg/liter (lb/ft<sup>3</sup>) or mg/mg (lb/lb); and

(d). the average dry sewage sludge content shall be the arithmetic average of all the samples taken during the run; and

vi. method 9 and the procedures in 40 CFR 60.11 (incorporated by reference in LAC 33:III.3003) shall be used to determine opacity.

#### E. Operational Standard C Total Hydrocarbons

1. The total hydrocarbons concentration in the exit gas from a sewage sludge incinerator shall be corrected for 0 percent moisture by multiplying the measured total hydrocarbons concentration by the correction factor calculated using Equation (7).

$$\text{Correction factor (percent moisture)} = \frac{1}{(1 - X)} \quad \text{Equation (7)}$$

Where:

X = decimal fraction of the percent moisture in the sewage sludge incinerator exit gas in hundredths.

2. The total hydrocarbons concentration in the exit gas from a sewage sludge incinerator shall be corrected to 7 percent oxygen by multiplying the measured total hydrocarbons concentration by the correction factor calculated using Equation (8).

$$\text{Correction factor (oxygen)} = \frac{14}{(21 - Y)} \quad \text{Equation (8)}$$

Where:

Y = percent oxygen concentration in the sewage sludge incinerator stack exit gas (dry volume/dry volume).

3. The monthly average concentration for total hydrocarbons in the exit gas from a sewage sludge incinerator stack, corrected for 0 percent moisture using the correction factor from Equation (7) and to 7 percent oxygen using the correction factor from Equation (8), shall not exceed 100 parts per million on a volumetric basis when measured using the instrument required by Paragraph F.5 of this Section.

#### F. Management Practices

1. The owner or operator of a sewage sludge incinerator shall provide access to the sewage sludge charged so that a well-mixed representative grab sample of the sewage sludge can be obtained.

2.a. A flow measuring device that can be used to determine either the mass or volume of sewage sludge charged to the incinerator shall be installed, calibrated, maintained, and properly operated.

b. The flow measuring device shall be certified by the manufacturer to have an accuracy of  $\pm 5$  percent over its operating range.

c. The flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator, unless specified otherwise by the state administrative authority.

3.a. A weighing device for determining the mass of any municipal solid waste charged to the incinerator when sewage sludge and municipal solid waste are incinerated together shall be installed, calibrated, maintained, and properly operated.

b. The weighing device shall have an accuracy of  $\pm 5$  percent over its operating range.

4.a. For incinerators equipped with a wet scrubbing device, a monitoring device that continuously measures and records the pressure drop of the gas flow through the wet scrubbing device shall be installed, calibrated, maintained, and properly operated.

b. Where a combination of wet scrubbers is used in series, the pressure drop of the gas flow through the combined system shall be continuously monitored.

c. The device used to monitor scrubber pressure drop shall be certified by the manufacturer to be accurate within  $\pm 250$  pascals ( $\pm 1$  inch water gauge) and shall be calibrated on an annual basis in accordance with the manufacturer's instructions.

5.a. An instrument that continuously measures and records the total hydrocarbons concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

b. The total hydrocarbons instrument shall employ a flame ionization detector, have a heated sampling line maintained at a temperature of 150° C or higher at all times, and be calibrated at least once every 24-hour operating period using propane.

6.a. An instrument that continuously measures and records the oxygen concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

b. The oxygen monitor shall be located upstream of any rabble shaft cooling air inlet into the incinerator exhaust gas stream, fan, ambient air recirculation damper, or any other source of dilution air.

c. The oxygen monitoring device shall be certified by the manufacturer to have a relative accuracy of  $\pm 5$  percent over its operating range and shall be calibrated according to method(s) prescribed by the manufacturer at least once each 24-hour operating period.

7. An instrument that continuously measures and records information used to determine the moisture content in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

8.a. An instrument that continuously records combustion temperature at every hearth in multiple hearth furnaces, in the bed and outlet of fluidized bed incinerators, and in the drying, combustion, and cooling zones of electric incinerators shall be installed, calibrated, maintained, and properly operated.

b. For multiple hearth furnaces, a minimum of one thermocouple shall be installed in each hearth in the cooling and drying zones, and a minimum of two thermocouples shall be installed in each hearth in the combustion zone.

c. For electric incinerators, a minimum of one thermocouple shall be installed in the drying zone and one in the cooling zone, and a minimum of two thermocouples shall be installed in the combustion zone.

d. Each temperature measuring device shall be certified by the manufacturer to have an accuracy of  $\pm 5$  percent over its operating range.

e. Operation of a sewage sludge incinerator shall not cause the operating combustion temperature for the sewage sludge incinerator to exceed the performance test combustion temperature by more than 20 percent.

9.a. A device for measuring the fuel flow to the incinerator shall be installed, calibrated, maintained, and properly operated.

b. The fuel flow measuring device shall be certified by the manufacturer to have an accuracy of  $\pm 5$  percent over its operating range.

c. The fuel flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator, unless specified otherwise by the state administrative authority.

10.a. An air pollution control device shall be appropriate for the type of sewage sludge incinerator and the operating parameters for the air pollution control device shall be adequate to indicate proper performance of the air pollution control device.

b. Operation of the air pollution control device shall not cause a significant exceedance of the average value for the air pollution control device operating parameters from the performance test required by Subparagraphs D.3.c and 4.e of this Section nor shall the operation of the air pollution control device violate any other requirements of this Section for which the air pollution control device is subjected.

11. The permittee shall collect and analyze sewage sludge fed to a sewage sludge incinerator for dry sludge content and volatile solids content using the method specified at Clause D.6.b.v of this Section, except that the determination of volatile solids, step (3)(b) of the method shall not be deleted.

12. Sewage sludge shall not be fired in a sewage sludge incinerator if it is likely to adversely affect a threatened or endangered species, listed under Section 4 of the Endangered Species Act, or its designated critical habitat.

13. The instruments required in Paragraphs F.2 - 9 of this Section shall be appropriate for the type of sewage sludge incinerator.

14. The state administrative authority may exempt the owner or operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator from the daily sampling and analysis of sludge feed in Paragraphs F.11 and Subparagraph G.1.d of this Section and from the recordkeeping requirement in Subparagraph H.2.p of this Section for the volatile solids content, only, of the sewage sludge charged to the incinerator during all periods of this incinerator following the performance test if:

a. the particulate matter emission rate measured during the performance test required under Paragraph C.4 of this Section is less than or equal to 0.38 g/kg of dry sewage sludge input (0.75 lb/ton); and

b. the state administrative authority determines that the requirements will not be necessary to evaluate the effects upon the environment and human health resulting from the emissions from the sewage sludge incinerator.

G Frequency of Monitoring. Except as specified otherwise in this Section, the frequency of monitoring shall be as follows:

1. Sewage Sludge

a. The frequency of monitoring for beryllium shall be as required in Subpart C of 40 CFR Part 61 (as incorporated by reference in LAC 33:III.5116), and for mercury as required in Subpart E of 40 CFR Part 61 (as incorporated by reference in LAC 33:III.5116).

b. The frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel in sewage sludge fed to a sewage sludge incinerator shall be the frequency in Table 1 of LAC 33:IX.3113.G.

Table 1 of LAC 33:IX.3113.G	
Frequency of Monitoring – Incineration	
Amount of sewage sludge <sup>1</sup> (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (4 times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (6 times per year)
Equal to or greater than 15,000	Once per month (12 times per year)
<sup>1</sup> Amount of sewage sludge fired in a sewage sludge incinerator (dry weight basis)	

c. After the sewage sludge has been monitored for two years at the frequency in Table 1 of LAC 33:IX.3113.G, the state administrative authority may reduce the frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel.

d. The frequency of monitoring for dry sewage sludge content and volatile solids content of the sewage sludge shall be once per day as a grab sample of the sewage sludge fed to the incinerator.

2. Total Hydrocarbons, Oxygen Concentration, Information to Determine Moisture Content, and Combustion Temperatures. The total hydrocarbons concentration and oxygen concentration in the exit gas from a sewage sludge incinerator stack, the information used to measure moisture content in the exit gas, and the combustion temperatures for the sewage sludge incinerator shall be monitored continuously.

3. Air Pollution Control Device Operating Parameters. Unless specified otherwise in this Subchapter, the frequency of monitoring for the appropriate air pollution control device operating parameters shall be daily.

4.a. The frequency of monitoring shall be as specified in this Section for any performance testing or other sampling requirements not covered above.

b. If the frequency of monitoring is not specified, then the frequency of monitoring shall be as specified by the state administrative authority.

H. Recordkeeping

1. If the owner/operator of a sewage sludge incinerator is the person who prepares sewage sludge, the owner/operator of the sewage sludge incinerator shall keep a record of the annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

2. The owner/operator of a sewage sludge incinerator shall develop the following information and shall retain this information for five years:

a. the concentration of lead, arsenic, cadmium, chromium, and nickel in the sewage sludge fed to the sewage sludge incinerator;

b. the total hydrocarbons concentrations in the exit gas from the sewage sludge incinerator stack;

c. information that indicates the requirements in the national emission standard for beryllium in Subpart C of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116) are met;

d. information that indicates the requirements in the national emission standard for mercury in Subpart E of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116) are met;

e. the operating combustion temperatures for the sewage sludge incinerator;

f. values for the air pollution control device operating parameters;

g. the oxygen concentration and information used to measure moisture content in the exit gas from the sewage sludge incinerator stack;

h. the sewage sludge feed rate;

i. the stack height for the sewage sludge incinerator;

j. the dispersion factor for the site where the sewage sludge incinerator is located;

k. the control efficiency for lead, arsenic, cadmium, chromium, and nickel for each sewage sludge incinerator;

l. the risk specific concentration for chromium calculated using Equation (6), if applicable;

m. a calibration and maintenance log for the instruments used to measure the total hydrocarbons concentration and oxygen concentration in the exit gas from the sewage sludge incinerator stack, the information needed to determine moisture content in the exit gas, and the combustion temperatures;

n. results of the particulate matter testing required in Subparagraph D.6.b of this Section;

o. for incinerators equipped with a wet scrubbing device, a record of the measured pressure drop of the gas flow through the wet scrubbing device, as required by Paragraph F.4 of this Section;

p. a record of the rate of sewage sludge fed to the incinerator, the fuel flow to the incinerator, and the total solids and volatile solids content of the sewage sludge charged to the incinerator; and

q. results of all applicable performance tests required in this Section.

#### I. Reporting

1. If the owner/operator of a sewage sludge incinerator is the person who prepares the sewage sludge, the owner/operator shall submit the information in Paragraph H.1 of this Section to the state administrative authority on February 19 of each year.

2. The owner/operator of a sewage sludge incinerator shall submit the information in Subparagraphs H.2.a - q of this Section to the state administrative authority on February 19 of each year.

3.a. In addition to the reporting requirements in Paragraphs I.1 and 2 of this Section, the owner/operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator subject to the provisions of this Subchapter shall submit to the state administrative authority on February 19 and August 19 of each year (semiannually) a report in writing that contains the following:

i. a record of average scrubber pressure drop measurements for each period of 15 minutes duration or more during which the pressure drop of the scrubber was less than, by a percentage specified below, the average scrubber pressure drop measured during the most recent performance test. The percent reduction in scrubber pressure drop for which a report is required shall be determined as follows:

(a). for incinerators that achieved an average particulate matter emission rate of 0.38 kg/mg (0.75 lb/ton) dry sewage sludge input or less during the most recent performance test, a scrubber pressure drop reduction of more than 30 percent from the average scrubber pressure drop recorded during the most recent performance test shall be reported; and

(b). for incinerators that achieved an average particulate matter emission rate of greater than 0.38 kg/mg (0.75 lb/ton) dry sewage sludge input during the most recent performance test, a percent reduction in pressure drop greater than that calculated according to the following equation:

$$P = -111E + 72.15$$

where:

P = percent reduction in pressure drop.

E = average particulate matter emissions (kg/megagram); and

ii. a record of average oxygen content in the incinerator exhaust gas for each period of 1-hour duration or more that the oxygen content of the incinerator exhaust gas exceeds the average oxygen content measured during the most recent performance test by more than 3 percent.

b. The owner or operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator from which the average particulate matter emission rate measured during the performance test required at Paragraph C.4 of this Section exceeds 0.38 g/kg of dry sewage sludge input (0.75 lb/ton of dry sewage sludge input) shall include in the report for each calendar day that a decrease in scrubber pressure drop or increase in oxygen content of exhaust gas is reported, a record of the following:

i. scrubber pressure drop averaged over each 1-hour incinerator operating period;

ii. oxygen content in the incinerator exhaust averaged over each 1-hour incinerator operating period;

iii. temperatures of every hearth in multiple hearth incinerators, the bed and outlet of fluidized bed incinerators, and the drying, combustion, and cooling zones of electric incinerators averaged over each 1-hour incinerator operating period;

iv. rate of sewage sludge charged to the incinerator averaged over each 1-hour incinerator operating period;

v. incinerator fuel use averaged over each 8-hour incinerator operating period; and

vi. moisture and volatile solids content of the daily grab sample of sewage sludge charged to the incinerator.

c. The owner or operator of any sewage sludge incinerator other than a multiple hearth, fluidized bed, or electric incinerator or any sewage sludge incinerator

equipped with a control device other than a wet scrubber shall include in the semiannual report a record of control device operation measurements, as specified in the plan approved under Paragraph C.5 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:809 (April 2002).

### Appendix P

#### Procedure to Determine the Annual Whole Sludge Application Rate for a Sewage Sludge

LAC 33:IX.3103.D.1.d.ii requires that the product of the concentration for each pollutant listed in Table 4 of LAC 33:IX.3103.D in sewage sludge sold or given away in a bag or other container for application to the land and the annual whole sludge application rate (AWSAR) for the sewage sludge not cause the annual pollutant loading rate for the pollutant in Table 4 of LAC 33:IX.3103.D to be exceeded. This Appendix contains the procedure used to determine the AWSAR for a sewage sludge that does not cause the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded.

The relationship between the annual pollutant loading rate (APLR) for a pollutant and the annual whole sludge application rate (AWSAR) for a sewage sludge is shown in Equation (1).

$$APLR = C \times AWSAR \times 0.001 \text{ Equation (1)}$$

Where:

APLR = annual pollutant loading rate in kilograms per hectare per 365-day period.

C = pollutant concentration in milligrams per kilogram of total solids (dry weight basis).

AWSAR = annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis).

0.001 = a conversion factor.

To determine the AWSAR, Equation (1) is rearranged into equation (2):

$$AWSAR = \frac{APLR}{C \times 0.001} \text{ Equation (2)}$$

The procedure used to determine the AWSAR for a sewage sludge is presented below.

Procedure:

1. Analyze a sample of the sewage sludge to determine the concentration for each of the pollutants listed in Table 4 of LAC 33:IX.3103.D in the sewage sludge.

2. Using the pollutant concentrations from Step 1 and the APLRs from Table 4 of LAC 33:IX.3103.D, calculate an AWSAR for each pollutant using Equation (2) above.

3. The AWSAR for the sewage sludge is the lowest AWSAR calculated in Step 2.

### Appendix Q

#### Pathogen Treatment Processes

##### A. Processes to Significantly Reduce Pathogens (PSRP)

1. **Aerobic Digestion.** Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20°C and 60 days at 15°C.

2. **Air Drying.** Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of three months. During two of the three months, the ambient average daily temperature is above 0°C.

3. **Anaerobic Digestion.** Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35° to 55°C and 60 days at 20°C.

4. **Composting.** Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 40°C or higher and remains at 40°C or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55°C.

5. **Lime Stabilization.** Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after two hours of contact.

##### B. Processes to Further Reduce Pathogens (PFRP)

1. **Composting.** Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55°C or higher for three days. Using the windrow composting method, the temperature of the sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period when the compost is maintained at 55°C or higher, there shall be a minimum of five turnings of the windrow.

2. **Heat Drying.** Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10 percent or lower. Either the temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80°C.

3. **Heat Treatment.** Liquid sewage sludge is heated to a temperature of 180°C or higher for 30 minutes.

4. **Thermophilic Aerobic Digestion.** Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 55° to 60°C.

5. **Beta Ray Irradiation.** Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20°C).

6. **Gamma Ray Irradiation.** Sewage sludge is irradiated with gamma rays from certain isotopes, such as <sup>60</sup>Cobalt and <sup>137</sup>Cesium, at dosages of at least 1.0 megarad at room temperature (approximately 20°C).

7. **Pasteurization.** The temperature of the sewage sludge is maintained at 70°C or higher for 30 minutes or longer.

**Appendix R**  
**Financial Assurance Documents**

**Document 1. Liability Endorsement**

COMMERCIAL BLENDER, COMPOSTER, OR MIXER  
OF SEWAGE SLUDGE LIABILITY ENDORSEMENT

Secretary

Louisiana Department of Environmental Quality

Post Office Box 82231

Baton Rouge, Louisiana 70884-2231

Attention: Office of Management and Finance, Financial  
Services Division

Dear Sir:

(A). This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with [name of the insured, which must be either the permit holder, the applicant, or the operator. (Note: The operator will provide the liability-insurance documentation only when the permit holder/applicant is a public governing body and the public governing body is not the operator.)] The insured's obligation to demonstrate financial responsibility is required in accordance with *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A. The coverage applies at [list the site identification number, site name, facility name, facility permit number, and facility address] for sudden and accidental occurrences. The limits of liability are per occurrence, and annual aggregate, per site, exclusive of legal-defense costs.

(B). The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with Subclauses (1)-(5), below, are hereby amended to conform with Subclauses (1)-(5), below:

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.3109.A.3, 4, or 5.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.

(4). Cancellation of this endorsement, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of this endorsement will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). Attached is the endorsement which forms part of the policy [policy number] issued by [name of insurer], herein called the insurer, of [address of the insurer] to [name of the insured] of [address of the insured], this [date]. The effective date of said policy is [date].

(D). I hereby certify that the wording of this endorsement is identical to the wording specified in LAC 33:IX.3109.A.2.b, effective on the date first written above and that insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]

[Typed name of authorized representative of insurer]

[Title of authorized representative of insurer]

[Address of authorized representative of insurer]

**Document 2. Certificate of Insurance**

COMMERCIAL BLENDER, COMPOSTER, OR MIXER  
OF SEWAGE SLUDGE FACILITY CERTIFICATE OF  
LIABILITY INSURANCE

Secretary

Louisiana Department of Environmental Quality

Post Office Box 82231

Baton Rouge, Louisiana 70884-2231

Attention: Office of Management and Finance, Financial  
Services Division

Dear Sir:

(A). [Name of insurer], the "insurer," of [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured, which must be either the permit holder or applicant of the facility], the "insured," of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A. The coverage applies at [list agency interest number, site name, facility name, facility permit number, and site address] for sudden and accidental occurrences. The limits of liability are each occurrence and annual aggregate, per site, exclusive of legal-defense costs. The coverage is provided under policy number [policy number], issued on [date]. The effective date of said policy is [date].

(B). The insurer further certifies the following with respect to the insurance described in Paragraph (A):

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.3109.A.3, 4, or 5.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to him a signed duplicate original of the policy and all endorsements.

(4). Cancellation of the insurance, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of the insurance will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:IX.3109.A.2.c, as such regulations were constituted on the date first written above, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]  
[Typed name of authorized representative of insurer]  
[Title of authorized representative of insurer]  
[Address of authorized representative of insurer]

**Document 3. Letter of Credit**

COMMERCIAL BLENDER, COMPOSTER, OR MIXER  
OF SEWAGE SLUDGE FACILITY IRREVOCABLE  
LETTER OF CREDIT

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 82231  
Baton Rouge, Louisiana 70884-2231  
Attention: Office of Management and Finance, Financial  
Services Division

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No.[number] at the request and for the account of [permit holder's or applicant's name and address] for its [list site identification number, site name, facility name, and facility permit number] at [location], Louisiana, in favor of any governmental body, person, or other entity for any sum or sums up to the aggregate amount of U.S. dollars [amount] upon presentation of:

(A). A final judgment issued by a competent court of law in favor of a governmental body, person, or other entity and against [permit holder's or applicant's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to the operation of the commercial blender, composteur, or mixer of sewage sludge site at the [name of permit holder or applicant] at [site location] as set forth in the *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A.

(B). A sight draft bearing reference to the Letter of Credit No. [number] drawn by the governmental body, person, or other entity, in whose favor the judgment has been rendered as evidenced by documentary requirement in Paragraph (A).

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental

Quality and [name of permit holder/applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.3109.A.3.e, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]  
[date]

**Document 4. Trust Agreement**

COMMERCIAL BLENDER, COMPOSTER, OR MIXER  
OF SEWAGE SLUDGE FACILITY TRUST  
AGREEMENT/STANDBY TRUST AGREEMENT

This Trust Agreement (the "Agreement") is entered into as of [date] by and between [name of permit holder or applicant], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the state of" or "a national bank" or a "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the state of Louisiana, has established certain regulations applicable to the Grantor, requiring that a permit holder or applicant for a permit of a commercial blender, composteur, or mixer of sewage sludge processing facility shall provide assurance that funds will be available when needed for [closure and/or post-closure] care of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected [the Trustee] to be the trustee under this Agreement, and [the Trustee] is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

**SECTION 1. DEFINITIONS**

As used in this Agreement:

(a). The term "Grantor" means the permit holder or applicant who enters into this Agreement and any successors or assigns of the Grantor.

(b). The term "Trustee" means the Trustee who enters into this Agreement and any successor trustee.

(c). The term "Secretary" means the Secretary of the Louisiana Department of Environmental Quality.

(d). The term "Administrative Authority" means the Secretary or a person designated by him to act therefor.

## SECTION 2. IDENTIFICATION OF FACILITIES AND COST ESTIMATES

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. [On Schedule A, list the agency interest number, site name, facility name, facility permit number, and the annual aggregate amount of liability coverage or current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.]

## SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party shall have access to the Fund, except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank except for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

## SECTION 4. PAYMENT FOR CLOSURE AND/OR POST-CLOSURE CARE OR LIABILITY COVERAGE

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of [liability claims, closure and/or post-closure] care of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for [liability claims, closure and/or post-closure] expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

## SECTION 5. PAYMENTS COMPRISED BY THE FUND

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

## SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill,

prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, except that:

(a). Securities or other obligations of the Grantor, or any owner of the [facility or facilities] or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government.

(b). The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c). The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

## SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized, at its discretion:

(a). To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b). To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1, et seq., including one which may be created, managed, or underwritten, or one to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares at its discretion.

## SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a). To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b). To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c). To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d). To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by



the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e). To compromise or otherwise adjust all claims in favor of, or against, the Fund.

#### SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and other proper charges and disbursements of the Trustee, shall be paid from the Fund.

#### SECTION 10. ANNUAL VALUATION

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee, within 90 days after the statement has been furnished to the Grantor and the administrative authority, shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

#### SECTION 11. ADVICE OF COUNSEL

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

#### SECTION 12. TRUSTEE COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

#### SECTION 13. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall, in writing, specify to the Grantor, the administrative authority, and the present Trustee by certified mail, 10 days before such change becomes effective, the date on which it assumes administration of the trust. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

#### SECTION 14. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by the persons designated

in the attached Exhibit A or such other persons as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing and signed by the administrative authority. The Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or termination of the authority of any person to act on behalf of the Grantor or administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or administrative authority, except as provided for herein.

#### SECTION 15. NOTICE OF NONPAYMENT

The Trustee shall notify the Grantor and the administrative authority, by certified mail, within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

#### SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist.

#### SECTION 17. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

#### SECTION 18. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any direction by the Grantor or the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all reasonable expenses incurred in its defense in the event that the Grantor fails to provide such defense.

#### SECTION 19. CHOICE OF LAW

This Agreement shall be administered, construed, and enforced according to the laws of the state of Louisiana.

#### SECTION 20. INTERPRETATION

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized [and their corporate seals to be hereunto affixed] and attested to as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B.3.i, on the date first written above.

WITNESSES: \_\_\_\_\_ GRANTOR: \_\_\_\_\_  
\_\_\_\_\_ By: \_\_\_\_\_

Its: \_\_\_\_\_

[Seal]

TRUSTEE:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

[Seal]

THUS DONE AND PASSED in my office in \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in the presence of \_\_\_\_\_ and \_\_\_\_\_, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

\_\_\_\_\_  
Notary Public

(The following is an example of the certification of acknowledgement that must accompany the trust agreement.)

STATE OF LOUISIANA  
PARISH OF \_\_\_\_\_

BE IT KNOWN, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared \_\_\_\_\_, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the \_\_\_\_\_, a corporation, for the consideration, uses, and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the \_\_\_\_\_ of said corporation and that he signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of \_\_\_\_\_ and \_\_\_\_\_, competent witnesses, who have hereunto subscribed their name as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:  
\_\_\_\_\_  
\_\_\_\_\_

NOTARY PUBLIC

### Document 5. Surety Bond

#### COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY FINANCIAL GUARANTEE BOND

Date bond was executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety: [name and business address]

[agency interest number, site name, facility name, facility permit number, and current closure and/or post-closure amount(s) for each facility guaranteed by this bond]

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we the sureties bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit or liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the commercial blender, composter, or mixer of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required by the *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109, when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to close is issued by the administrative authority or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:IX.3109.B and obtain written approval from the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety,

THEN, this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification or amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.3109.B and the conditions of the commercial blender, composter, or mixer of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.3109.B.4.h, effective on the date this bond was executed.

**PRINCIPAL**

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

**CORPORATE SURETIES**

[Name and Address]

State of incorporation: \_\_\_\_\_

Liability limit: \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[This information must be provided for each cosurety]

Bond Premium: \$ \_\_\_\_\_

**Document 6. Performance Bond**

**COMMERCIAL BLENDER, COMPOSTER,  
OR MIXER OF SEWAGE SLUDGE  
FACILITY PERFORMANCE BOND**

Date bond was executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety: [name(s) and business address(es)]

[agency interest number, site name, facility name, facility permit number, facility address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and/or post-closure costs separately)]

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the commercial blender, composter, or mixer of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

AND, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the closure plan and other

requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide financial assurance as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of LAC 33:IX.3107.B.3, or of its permit, for the facility for which this bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has been found in violation of the post-closure requirements of the LAC 33:IX.3107.B.3, or of its permit for the facility for which this bond guarantees performance of post-closure, the Surety shall either perform post-closure in accordance with the closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.3109.B, and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permit, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become

effective until the Surety receives written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.3109.B and the conditions of the commercial blender, composter, or mixer of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.3109.B.5.h, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

**Document 7. Letter of Credit**

**COMMERCIAL BLENDER, COMPOSTER, OR MIXER  
OF SEWAGE SLUDGE FACILITY IRREVOCABLE  
LETTER OF CREDIT**

Secretary

Louisiana Department of Environmental Quality

Post Office Box 82231

Baton Rouge, Louisiana 70884-2231

Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in favor of the Department of Environmental Quality of the state of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the [closure and/or post-closure] fund for its [list agency interest number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars \$ \_\_\_\_\_ upon presentation of:

(i). A sight draft, bearing reference to the Letter of Credit No. \_\_\_\_\_ drawn by the administrative authority, together with;

(ii). A statement, signed by the administrative authority, declaring that the amount of the draft is payable into the standby trust fund pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder or applicant], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B.6.h, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]  
[date]

**Document 8. Certificate of Insurance**

COMMERCIAL BLENDER, COMPOSTER, OR  
MIXER OF SEWAGE SLUDGE FACILITY  
CERTIFICATE OF INSURANCE  
FOR CLOSURE AND/OR POST-CLOSURE CARE

Name and Address of Insurer: \_\_\_\_\_  
(hereinafter called the "Insurer")

Name and Address of Insured: \_\_\_\_\_  
(hereinafter called the "Insured") (Note: Insured must be the permit holder or applicant)

Facilities covered: [list the agency interest number, site name, facility name, facility permit number, address, and amount of insurance for closure and/or post-closure care] (These amounts for all facilities must total the face amount shown below.)

Face Amount: \_\_\_\_\_  
Policy Number: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure and/or post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects to the requirements of LAC 33:IX.3109.B, as applicable, and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the Insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana and that the wording of this certificate is identical to the wording specified in LAC 33:IX.3109.B.7.j, effective on the date shown immediately below.

[Authorized signature of Insurer]  
[Name of person signing]  
[Title of person signing]  
Signature of witness or notary: \_\_\_\_\_  
[Date]

**Document 9. Letter from the Chief Financial Officer**

COMMERCIAL BLENDER, COMPOSTER, OR  
MIXER OF SEWAGE SLUDGE FACILITY  
LETTER FROM THE CHIEF FINANCIAL  
OFFICER (LIABILITY COVERAGE,  
CLOSURE, AND/OR POST-CLOSURE)

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 82231  
Baton Rouge, Louisiana 70884-2231  
Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

I am the chief financial officer of [name and address of firm, which may be either the permit holder, applicant, or parent corporation of the permit holder or applicant]. This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for [insert "liability coverage," "closure," and/or "post-closure," as applicable] as specified in [insert "*Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A," "LAC 33:IX.3109.B," or LAC 33:IX.3109.A and B"].

[Fill out the following four paragraphs regarding facilities and associated liability coverage, and closure and post-closure cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the agency interest number, site name, facility name, and facility permit number.]

(A). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or

not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.3109.A. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for [insert "closure," "post-closure," or "closure and post-closure"] is demonstrated through a financial test similar to that specified in LAC 33:IX.3109.B or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:IX.3109.B" or "LAC 33:IX.3109.A and B"], [insert "liability coverage," "closure," "post-closure," or "closure and post-closure"] care of the following commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post-closure care so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for liability coverage, closure and/or post-closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.3109.A and/or B. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

**PART A. LIABILITY COVERAGE FOR ACCIDENTAL OCCURRENCES**

[Fill in Alternative I if the criteria of LAC 33:IX.3109.B.8.a.i are used.]

**ALTERNATIVE I**

- 1. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_
- \*2. Current assets \$ \_\_\_\_\_
- \*3. Current liabilities \$ \_\_\_\_\_

- \*4. Tangible net worth \$ \_\_\_\_\_
  - \*5. If less than 90 percent of assets are located in the U.S., give total U.S. assets \$ \_\_\_\_\_
- |                                       |       |       |
|---------------------------------------|-------|-------|
|                                       | YES   | NO    |
| 6. Is line 4 at least \$10 million?   | _____ | _____ |
| 7. Is line 4 at least 6 times line 1? | _____ | _____ |
- \*8. Are at least 90 percent of assets located in the U.S.? If not, complete line 9. \_\_\_\_\_
  - 9. Is line 4 at least 6 times line 1? \_\_\_\_\_

[Fill in Alternative II if the criteria of LAC 33:IX.3109.B.8.a.ii are used.]

**ALTERNATIVE II**

- 1. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_
  - 2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_
  - 3. Date of issuance of bond \_\_\_\_\_
  - 4. Date of maturity of bond \_\_\_\_\_
  - \*5. Tangible net worth \$ \_\_\_\_\_
  - \*6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.) \$ \_\_\_\_\_
- |                                       |       |       |
|---------------------------------------|-------|-------|
|                                       | YES   | NO    |
| 7. Is line 5 at least \$10 million?   | _____ | _____ |
| 8. Is line 5 at least 6 times line 1? | _____ | _____ |
- \*9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10. \_\_\_\_\_
  - 10. Is line 6 at least 6 times line 1? \_\_\_\_\_

[Fill in Part B if you are using the financial test to demonstrate assurance only for closure and/or post-closure care.]

**PART B. CLOSURE AND/OR POST CLOSURE**

[Fill in Alternative I if the criteria of LAC 33:IX.3109.B.8.a.i are used.]

**ALTERNATIVE I**

- 1. Sum of current closure and/or post-closure estimate (total all cost estimates shown above) \$ \_\_\_\_\_
  - \*2. Tangible net worth \$ \_\_\_\_\_
  - \*3. Net worth \$ \_\_\_\_\_
  - \*4. Current Assets \$ \_\_\_\_\_
  - \*5. Current liabilities \$ \_\_\_\_\_
  - \*6. The sum of net income plus depreciation, depletion, and amortization \$ \_\_\_\_\_
  - \*7. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.) \$ \_\_\_\_\_
- |                                       |       |       |
|---------------------------------------|-------|-------|
|                                       | YES   | NO    |
| 8. Is line 2 at least \$10 million?   | _____ | _____ |
| 9. Is line 2 at least 6 times line 1? | _____ | _____ |

\*10. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 11.  
 11. Is line 7 at least 6 times line 1? \_\_\_\_\_

[Fill in Alternative II if the criteria of LAC 33:IX.3109.B.8.a.ii are used.]

**ALTERNATIVE II**

1. Sum of current closure and post-closure cost estimates (total of all cost estimates shown above) \$ \_\_\_\_\_  
 2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_  
 3. Date of issuance of bond \_\_\_\_\_  
 4. Date of maturity of bond \_\_\_\_\_  
 \*5. Tangible net worth (if any portion of the closure and/or post-closure cost estimate is included in "total liabilities" on your firm's financial statement, you may add the amount of that portion to this line) \$ \_\_\_\_\_  
 \*6. Total assets in U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.) \$ \_\_\_\_\_  
 YES NO  
 7. Is line 5 at least \$10 million? \_\_\_\_\_  
 8. Is line 5 at least 6 times line 1? \_\_\_\_\_  
 9. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 10. \_\_\_\_\_  
 10. Is line 6 at least 6 times line 1? \_\_\_\_\_

[Fill in Part C if you are using the financial test to demonstrate assurance for liability coverage, closure, and/or post-closure care.]

**PART C. LIABILITY COVERAGE, CLOSURE AND/OR POST-CLOSURE**

[Fill in Alternative I if the criteria of LAC 33:IX.3109.B.8.a.i are used.]

**ALTERNATIVE I**

1. Sum of current closure and/or post-closure cost estimates (total of all cost estimates listed above) \$ \_\_\_\_\_  
 2. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_  
 3. Sum of lines 1 and 2 \$ \_\_\_\_\_  
 \*4. Total liabilities (If any portion of your closure and/or post-closure cost estimates is included in your "total liabilities" in your firm's financial statements, you may deduct that portion from this line and add that amount to lines 5 and 6.) \$ \_\_\_\_\_  
 \*5. Tangible net worth \$ \_\_\_\_\_

\*6. Net worth \$ \_\_\_\_\_  
 \*7. Current assets \$ \_\_\_\_\_  
 \*8. Current liabilities \$ \_\_\_\_\_  
 \*9. The sum of net income plus depreciation, depletion, and amortization \$ \_\_\_\_\_  
 \*10. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.) \$ \_\_\_\_\_

YES NO  
 11. Is line 5 at least \$10 million? \_\_\_\_\_  
 12. Is line 5 at least 6 times line 3? \_\_\_\_\_  
 \*13. Are at least 90 percent of assets located in the U.S.? If not, complete line 14. \_\_\_\_\_  
 14. Is line 10 at least 6 times line 3? \_\_\_\_\_

[Fill in Alternative II if the criteria of LAC 33:IX.3109.B.8.a.ii are used.]

**ALTERNATIVE II**

1. Sum of current closure and/or post-closure cost estimates (total of all cost estimates listed above) \$ \_\_\_\_\_  
 2. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_  
 3. Sum of lines 1 and 2 \$ \_\_\_\_\_  
 4. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_  
 5. Date of issuance of bond \_\_\_\_\_  
 6. Date of maturity of bond \_\_\_\_\_  
 \*7. Tangible net worth (If any portion of the closure and/or post-closure cost estimates is included in the "total liabilities" in your firm's financial statements, you may add that portion to this line.) \$ \_\_\_\_\_  
 \*8. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.) \$ \_\_\_\_\_  
 YES NO  
 9. Is line 7 at least \$10 million? \_\_\_\_\_  
 10. Is line 7 at least 6 times line 3? \_\_\_\_\_  
 \*11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12. \_\_\_\_\_  
 12. Is line 8 at least 6 times line 3? \_\_\_\_\_

(The following is to be completed by all firms providing the financial test)

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:IX.3109.B.8.d.  
 [Signature of chief financial officer for the firm]  
 [Typed name of chief financial officer]  
 [Title]  
 [Date]

## Document 10. Corporate Guarantee

### COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY CORPORATE GUARANTEE FOR LIABILITY COVERAGE, CLOSURE, AND/OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of our subsidiary [insert the name of the permit holder or applicant] of [business address].

#### Recitals

(A). The guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B.8.i.

(B). [Subsidiary] is the [insert "permit holder," or "applicant for a permit"] hereinafter referred to as [insert "permit holder" or "applicant"] for the following commercial blender, composter, or mixer of sewage sludge facility covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage, closure, and/or post-closure and the amount of annual aggregate liability coverage, closure, and/or post-closure costs covered by the guarantee]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure and/or post-closure.]

(C). "Closure plans" as used below refers to the plans maintained as required by LAC 33:IX.3107.B.3, for the closure and/or post-closure care of the facility identified in Paragraph (B) above.

(D). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that [insert "permit holder" or "applicant"] fails to perform [insert "closure," "post-closure care," or "closure and post-closure care"] of the above facility in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in LAC 33:IX.3109.B.3, as applicable, in the name of [insert "permit holder" or "applicant"] in the amount of the current closure and/or post-closure estimates as specified in LAC 33:IX.3109.B.

[Fill in Paragraph (E) below if the guarantee is for liability coverage.]

(E). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden and accidental occurrences arising from operations of the facility covered by this guarantee that in the event that [insert "permit holder" or "applicant"] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the coverage limits identified above.

(F). The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the administrative authority and to [insert "permit holder" or "applicant"] that he intends to provide alternative financial assurance as specified in [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"], as applicable, in the name of the [insert "permit holder" or "applicant"]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [insert "permit holder" or "applicant"] has done so.

(G). The guarantor agrees to notify the administrative authority, by certified mail, of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(H). The guarantor agrees that within 30 days after being notified by the administrative authority of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of [insert "liability coverage" or "closure and/or post-closure care"] he shall establish alternate financial assurance as specified in [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"], as applicable, in the name of [insert "permit holder" or "applicant"] unless [insert "permit holder" or "applicant"] has done so.

(I). The guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: [if the guarantee is for closure and post-closure, insert "amendment or modification of the closure and/or post-closure care, the extension or reduction of the time of performance of closure and/or post-closure"], or any other modification or alteration of an obligation of the [insert "permit holder" or "applicant"] pursuant to LAC 33:IX.3107.B.3.

(J). The guarantor agrees to remain bound under this guarantee for as long as the [insert "permit holder" or "applicant"] must comply with the applicable financial assurance requirements of [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"] for the above-listed facility, except that guarantor may cancel this guarantee by sending notice by certified mail, to the administrative authority and to the [insert "permit holder" or "applicant"], such cancellation to become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the [insert "permit holder" or "applicant"], as evidenced by the return receipts.

(K). The guarantor agrees that if the [insert "permit holder" or "applicant"] fails to provide alternative financial assurance as specified in [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"], as applicable, and obtain written approval of such assurance from the administrative authority within 60 days after a notice of cancellation by the guarantor is received by the administrative authority from guarantor, guarantor shall provide such alternate financial assurance in the name of the [insert "permit holder" or "applicant"].

(L). The guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by the [insert "permit holder" or "applicant"]. Guarantor expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).



I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 33:IX.3109.B.8.i, effective on the date first above written.

Effective date: \_\_\_\_\_

[Name of Guarantor]

[Authorized signature for guarantor]

[Typed name and title of person signing]

Thus sworn and signed before me this [date].

\_\_\_\_\_  
Notary Public

James H. Brent, Ph.D.  
Assistant Secretary

0204#034

**RULE**

**Office of the Governor  
Real Estate Commission**

Advertising (LAC 46:LXVII.2501 and 2515)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Real Estate Commission has amended LAC 46:LXVII.Chapter 25. The amendment establishes standard information to be included in all advertising by a real estate licensee and requires all trade names used by licensee, registrants, or certificate holders in advertising to be a clearly distinguished entity from that used by other licensees, registrants, or certificate holders.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXVII. Real Estate**

**Chapter 25. Advertising**

**§2501. Advertisements**

A. All advertising by any licensee shall include the phone number and the identity of the listing broker or firm through the use of the identical name under which the listing broker or firm is licensed or a registered trade name that is a clearly identifiable entity which will distinguish the listing broker or firm from other licensees, registrants, or certificate holders.

B. Any trade name used by a licensee, registrant or certificate holder in advertising shall be a trade name that is a clearly identifiable entity that will distinguish itself from other licensees, registrants or certificate holders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:829 (April 2002).

**§2515. Internet Advertising**

A. - C.1 ...

2. the name of the licensed broker or agency listed on the license of the salesperson or associate broker;

3. the city, state and country in which the broker's main office is located;

C.4.- D.1. ...

2. the name of the licensed broker or agency listed on the license of the salesperson or associate broker;

3. the city, state and country in which the broker's main office is located;

4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:829 (April 2002).

Julius C. Willie  
Executive Director

0204#039

**RULE**

**Office of the Governor  
Real Estate Commission**

Branch Office (LAC 46:LXVII.2301)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Real Estate Commission has amended LAC 46:LXVII.Chapter 23. The amendment requires all branch offices to be under the direct supervision of a sponsoring, qualifying, or affiliated broker and establish the duties and penalties associated therein.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXVII. Real Estate**

**Chapter 23. Branch Offices**

**§2301. Branch Office**

A. ...

B. Every branch office shall be under the direct supervision of a sponsoring, qualifying, or affiliated broker who shall be designated in writing as the branch office manager. A copy of the designation shall be submitted to the commission within five days following the date of the original designation or any changes thereto.

C. While supervising a branch office, a sponsoring, qualifying, or affiliated broker has all the duties of and is subject to the penalties applicable to a sponsoring broker. This does not relieve the sponsoring broker of the ultimate responsibility of the branch office operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:829 (April 2002).

Julius C. Willie  
Executive Director

0204#040

**RULE**

**Office of the Governor  
Real Estate Commission**

Franchise Operations (LAC 46:LXVII.4501)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Real Estate Commission has amended LAC 46:LXVII.Chapter 45. The amendment requires all franchisors and franchisees to use a name or trade name that can be clearly distinguished from those used by other franchisors and franchisees.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXVII. Real Estate**

**Chapter 45. Franchise Operations**

**§4501. Registration of Franchise Name**

A. ...

B. Any name or trade name used by a franchisor or franchisee shall be a name or trade name that is a clearly identifiable entity that will distinguish itself from other franchisors or franchisees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:830 (April 2002).

Julius C. Willie  
Executive Director

0204#041

**RULE**

**Office of the Governor  
Real Estate Commission**

Trade Names (LAC 46:LXVII.1903)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Real Estate Commission has amended LAC 46:LXVII.Chapter 19. The amendment requires all names or trade names used by licensees, registrants, or certificate holders in advertising and/or written or verbal communication to be a clearly distinguished entity from the names or trade names used by other licensees, registrants, or certificate holders.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXVII. Real Estate**

**Chapter 19. Names on Licenses, Registrations, and  
Certificates; Trade Names; Symbols; and  
Trademarks**

**§1903. Trade names**

A. ...

B. All names and/or trade names used by licensees, registrants or certificate holders in advertising and/or written or verbal communications of any kind shall be a name that is a clearly identifiable entity that will distinguish it from other licensees, registrants or certificate holders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:830 (April 2002).

Julius C. Willie  
Executive Director

0204#042

**RULE**

**Department of Health and Hospitals  
Board of Medical Examiners**

Temporary Permits for Athletic Trainers  
(LAC 46:XLV.3162)

In accordance with R.S. 49:953, the Louisiana Medical Practice Act, R.S. 37:1261-1292, and particularly R.S. 37:1270(B), as well as the Athletic Trainers Law, R.S. 37:3301-3312, and particularly R.S. 3:3303.A(4), the Louisiana State Board of Medical Examiners has adopted administrative rules governing athletic trainers to provide for the issuance of temporary permits, under specified conditions, which allow an athletic trainer to work under the supervision and direction of a certified athletic trainer pending certification by the Board, LAC 46:XLV, Subpart 2, Chapter 31, Subchapter G, §3162. Such amendments would allow the board to issue a temporary permit to an applicant for certification as an athletic trainer, otherwise completely qualified for certification, who is scheduled to take or awaiting the results of the examination required for the issuance of certification, whose application is pending consideration by the board, to one under consideration for an H-1 or equivalent visa by the United States Immigration and Naturalization Service, or in such other instances as the board may deem proper.

The rule amendments are set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLV. Medical Professions**

**Subpart 2. Licensing and Certification**

**Chapter 31. Athletic Trainers**

**Subchapter G. Certificate Issuance, Termination,  
Renewal, Reinstatement**

**§3162. Restricted Certificates**

A. General. With respect to applicants who do not meet or possess all of the qualifications and requirements for certification required by this Chapter the board may, in its discretion, issue such temporary restricted certificates as are in its judgment necessary or appropriate to its responsibilities under law. Temporary restricted certificates shall be designated and known as permits.

B. Effect of Permit. A permit entitles the holder to engage in the practice of athletic training in the state of Louisiana only for the period of time specified by such

permit and creates no right or entitlement to certification or renewal of the permit after its expiration.

C. Types of Permits. The types of permits that the board may consider issuing are enumerated in the following paragraphs of this section. Other permits may be issued by the board upon such terms, conditions, limitations, or restrictions as to time, place, nature, and scope of practice as deemed, in its judgment, necessary or appropriate to the particular circumstances of individual applicants.

D. Limitations. Athletic trainers holding any permit issued under this Section may practice athletic training only under the supervision and direction of a certified athletic trainer who holds certification issued by the board, who shall provide such on-premises supervision and direction to the permit holder as is adequate to ensure the safety and welfare of athletes. Such supervision and direction shall be deemed to be satisfied by on-premises direction and supervision for not less than one hour each week.

E. Permit Pending Application for Visa. The board may issue a permit to practice athletic training to an applicant who is otherwise completely qualified for certification as an athletic trainer, save for possessing an H1 or equivalent visa, provided that the applicant has completed all applicable requirements and procedures for issuance of certification or a permit and is eligible for an H-1 or equivalent visa under the rules and regulations promulgated by the United States Immigration and Naturalization Service (INS).

1. A permit issued under §3162.E shall expire and become null and void on the earlier of:

- a. 90 days from the date of issuance of such permit;
- b. 10 days following the date on which the applicant receives notice of INS action granting or denying the applicant's petition for an H-1 or equivalent visa; or
- c. the date on which the board gives notice to the applicant of its final action granting or denying issuance of certification to practice athletic training.

2. The board may in its discretion extend or renew, for one or more additional 90-day periods, a permit that has expired pursuant to §3162.E.1.a in favor of an applicant who holds such a permit and who has filed a petition for an H-1 or equivalent visa with the INS, but whose pending petition has not yet been acted on by the INS within 90 days from issuance of such permit.

F. Permit Pending Examination/Results. The board may issue a permit to practice athletic training to an applicant who has taken the examination required by §3107.A.4 but whose scores have not yet been reported or to an applicant scheduled to take the examination at its next administration who has not previously failed such examination, to be effective pending the reporting of such scores to the board, provided that the applicant possesses and meets all of the qualifications and requirements for certification required under this Chapter, save for having taken, passed, or received the results of the examination specified in §3107.A.4.

1. A permit issued under §3162.F shall expire, and thereby become null, void and to no effect on the earlier of any date that:

- a. the board gives written notice to the permit holder that he has failed to achieve a passing score on the certification examination;

b. the board gives written notice to the permit holder pursuant to §3143.C that it has probable cause to believe that he has engaged or attempted to engage in conduct which subverted or undermined the integrity of the examination process;

c. the permit holder is issued a certificate to practice athletic training pursuant to §3153 of this Chapter; or

d. the holder of a permit issued under §3162.F fails to appear for and take the certification examination for which he has registered.

2. The board may, in its discretion, extend or renew a permit which has expired pursuant to §3162.F.1 in favor of an applicant who makes written request to the board and evidences to its satisfaction a life-threatening or other significant medical condition, financial hardship or other extenuating circumstance.

G. Permit Pending Application. The board may issue a permit to practice athletic training, effective for a period of 60 days, to an applicant who has made application to the board for certification as an athletic trainer, who provides satisfactory evidence of having successfully completed the examination required by §3107.A.4 and who is not otherwise demonstrably ineligible for certification under R.S. 37:3307.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, R.S. 37:1270, R.S. 37:3301-3312 and R.S. 37:3303.A(4).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 28:830 (April 2002).

John B. Bobear, M.D.  
Interim Executive Director

0204#018

## **RULE**

### **Department of Health and Hospitals Office of Addictive Disorders**

#### **OAD Resource Allocation Formula**

The purpose for a statewide resource allocation formula is to provide a rational, objective, and fair basis to use in evaluating equitable access to services by persons in all areas of the state. The intent is to use the formula as a management tool to increase service availability to residents living in regions with the least access. Given the limited availability of services in Louisiana, no region is over-served, thus it is important to bring up the under-served regions without reducing the limited service infrastructure anywhere else in the state.

A Resource Allocation Task Force representing all regions of the state was convened in Baton Rouge in August, 1999 to discuss options and to develop a consensus list of formula elements. From a long list of potential data elements, approximately 40 separate recommendations were made by task force members. Taking the areas of strongest consensus, the recommendations were analyzed and grouped, representative measures were chosen for each group, and weights were chosen to represent the relative importance of each element. The results comprise the elements and weights of the formula as follows.

**Formula Elements**

**Poverty**C20 Percent. Poverty was the element with the most support, with all 10 regions recommending inclusion. This is measured as the number of persons residing in the region who have incomes below the poverty level as defined by the U.S. Census. Poverty is a barrier to service access and is also a risk factor associated with substance abuse problems.

**Population**C20 Percent. The total population of persons from 15 to 34 years of age living in the region. The effect of this measure will be to give emphasis on the population density and the number of people in the age range of most potential service recipients.

**Treatment Need**C20 Percent. This is the estimated number of adults needing alcohol or drug treatment in each region. These estimates were developed by researchers at the Research Triangle Institute under contract with the state. This element is important because it is a direct measure of alcohol and drug services need.

**Arrests**C15 Percent. Arrest recommendations had more variation than other domains. Recommendations varied as to juvenile versus adult, alcohol versus drug, property and violence versus alcohol and drug offenses. Arrests are thought to reflect a dimension of equity that is not well reflected in other elements. The chosen element is the total number of adult and juvenile arrests for alcohol and drug offenses.

**Rurality**C15 Percent. This element is closely related to transportation deficits, which were articulated as particular problems for rural areas. The actual measure is the number of persons living in rural places. This is defined by the U.S. Census as places with less than 2,500 residents.

**Teenage Mothers**C10 Percent. From birth certificate data provided by the Vital Records Registry has been obtained the number of persons below 20 years of age who gave birth. These young families have multiple risk factors and service access barriers.

The following data for the formula are obtained from state and federal government agencies, and from a documented research study of the Research Triangle Institute (Round 1 State Treatment Needs Assessment Studies). The most available data available is used at the time the formula is compiled; the data will be updated only when the entire formula is reconsidered on an annual or biennial basis. It is understood that each type of data used in the formula has limitations and weaknesses. Some of the elements are more recent than others, some may not be faithfully reported in all regions by the various agency reporting systems, one is based on a survey, which has limitations, and some are indirect indicators instead of direct measures. The use of multiple elements mitigates the influence of any one element and the use of public data makes this an objective and rational system that treats all regions fairly.

**Formula Tables**

Regional Data						
Region	Poverty	Population Age15-34	Alcohol & Drug Treatment Need	Alcohol & Drug Arrests	Rurality	Teenage Parents
1	167,521	192,257	52,223	8,984	7,609	1,943
2	108,353	190,521	36,626	7,194	161,060	1,319
3	83,028	120,700	22,574	4,026	123,889	1,006
4	131,733	159,291	39,741	4,882	230,395	1,551
5	51,416	80,167	22,036	4,469	93,337	771
6	73,896	103,731	24,074	4,122	167,011	959
7	120,692	151,082	34,286	7,276	179,874	1,419
8	95,346	111,622	22,134	3,786	161,800	1,150
9	72,190	107,999	36,287	5,341	216,287	1,067
10	62,827	145,880	43,810	4,759	6,673	1,013
Total	967,002	1,363,250	333,791	54,839	1,347,935	12,198

The final step in constructing the formula is to convert the data into percentages and to adjust each percentage according to the weight for that element. The resulting

formula table as shown below indicates in the far right column the percent of total state service resources that should be available to the residents of each region.

FY 2001 Resource Allocation Formula							
Weights	20%	20%	20%	15%	15%	10%	**
Region	Poverty	Population Age 15-34	Alcohol & Drug Treatment Need	Alcohol & Drug Arrests	Rurality	Teenage Parents	Regional Formula Allocation
1	17.3%	14.1%	15.6%	16.4%	0.6%	15.9%	<b>13.5%</b>
2	11.2%	14.0%	11.0%	13.1%	11.9%	10.8%	<b>12.1%</b>
3	8.6%	8.9%	6.8%	7.3%	9.2%	8.2%	<b>8.1%</b>
4	13.6%	11.7%	11.9%	8.9%	17.1%	12.7%	<b>12.6%</b>
5	5.3%	5.9%	6.6%	8.1%	6.9%	6.3%	<b>6.5%</b>
6	7.6%	7.6%	7.2%	7.5%	12.4%	7.9%	<b>8.3%</b>
7	12.5%	11.1%	10.3%	13.3%	13.3%	11.6%	<b>11.9%</b>
8	9.9%	8.2%	6.6%	6.9%	12.0%	9.4%	<b>8.7%</b>
9	7.5%	7.9%	10.9%	9.7%	16.0%	8.7%	<b>10.0%</b>
10	6.5%	10.7%	13.1%	8.7%	0.5%	8.3%	<b>8.3%</b>
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	<b>100.00%</b>

**Formula Applications**

The formula provides a measurement tool to assist in working toward equitable access to services in the state. Application of this method requires policy decisions concerning various categories of program funding. For the coming year the following policy decisions are in effect and they will be reconsidered periodically.

**Hold Harmless.** Funding will not be reduced for any region in order to shift funds to under-served regions. The reason for this policy is to protect the state’s investment in programs that have been built up over time. Also, it is recognized that many programs provide services to clients who are residents of other regions.

**Dollars Follow Clients.** Costs will be tracked to the region of residence of clients and this will be the primary comparison made to determine equitable access to services. This is a distinctly different method than tracking expenditures by service location.

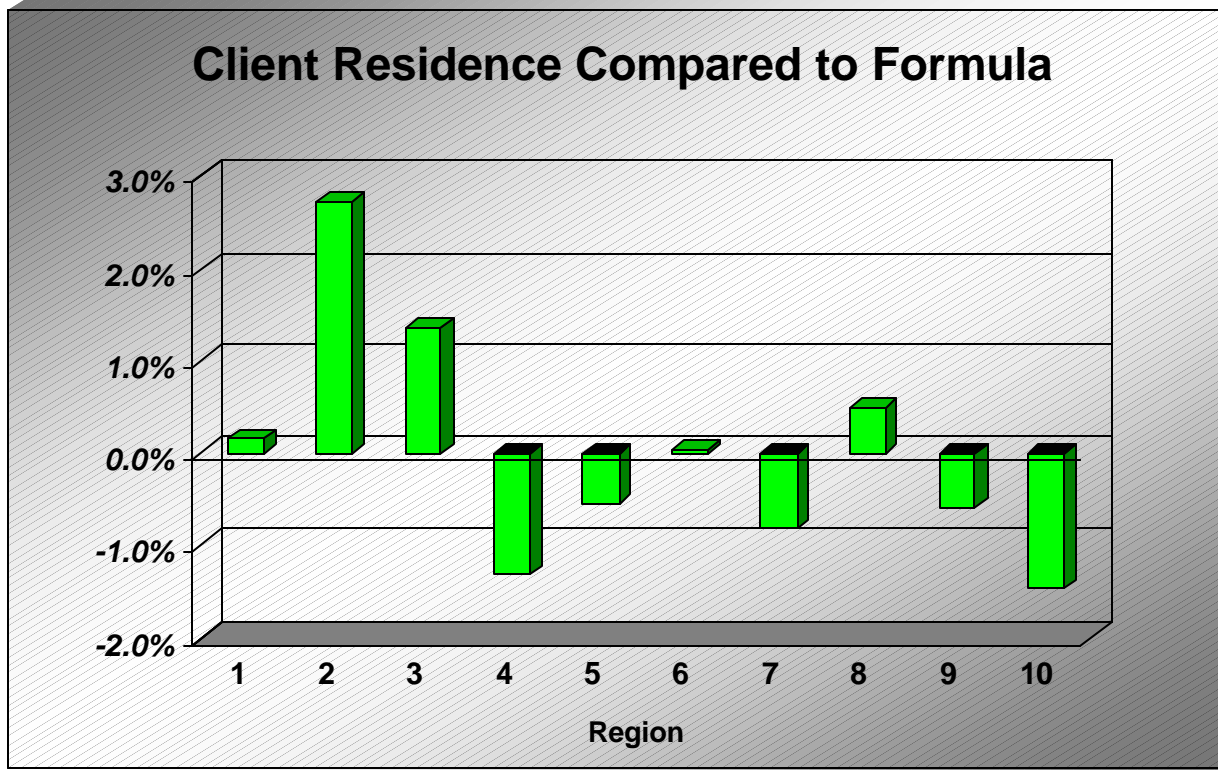
**Drug Courts and Cross-Regional Programs.** The "Dollars Follow Clients" policy applies to all regional programs included under formula funding and specifically includes Drug Courts and programs that are cross-regional in nature.

**Categoricals and Statewides.** The "Dollars Follow Clients" policy does not apply to categorical federal grant funded programs or other programs that are statewide in nature. Funding for both of these types of programs is not included in formula funding comparisons.

**Expand Toward Equity.** The primary use of the formula will be to identify under-served regions of the state and to target them with new or underutilized funds. During budget cycles in which there is a reduction in overall state funding available, the "hold harmless" policy means that the "dollars follow clients" policy will not be followed. Instead, the location of service expenditures will be the primary comparison method to plan for resource allocation.

<b>Appendix A</b>				
<b>Formula Comparisons Using Current Budget Expenditures and Residents Utilization</b>				
<b>Region</b>	<b>Current Budget Expenditures</b>	<b>Adjusted Budget Based on Client Residence</b>	<b>Formula</b>	<b>Over/(Under) Formula (Res)</b>
1	\$5,259,422	\$5,562,819	\$5,500,480	\$62,339
2	\$4,914,477	\$6,032,089	\$4,930,060	\$1,102,029
3	\$3,913,825	\$3,885,346	\$3,300,288	\$585,058
4	\$3,265,333	\$4,592,650	\$5,133,781	(\$541,131)
5	\$2,265,151	\$2,390,732	\$2,648,379	(\$257,647)
6	\$5,299,292	\$3,396,466	\$3,381,776	\$14,690
7	\$5,241,339	\$4,539,443	\$4,848,571	(\$309,128)
8	\$3,071,759	\$3,734,957	\$3,544,754	\$190,203
9	\$5,119,743	\$3,826,785	\$4,074,429	(\$247,644)
10	\$2,393,953	\$2,783,007	\$3,381,776	(\$598,769)
Total	\$40,744,294	\$40,744,294	\$40,744,294	(\$0)

<b>Region</b>	<b>Current % of Budget Expenditures</b>	<b>% Based on Client Residence</b>	<b>% Per Formula</b>	<b>Over/(Under) Formula (Res)</b>
1	12.9%	13.7%	13.5%	0.2%
2	12.1%	14.8%	12.1%	2.7%
3	9.6%	9.5%	8.1%	1.4%
4	8.0%	11.3%	12.6%	-1.3%
5	5.6%	5.9%	6.5%	-0.6%
6	13.0%	8.3%	8.3%	0.0%
7	12.9%	11.1%	11.9%	-0.8%
8	7.5%	9.2%	8.7%	0.5%
9	12.6%	9.4%	10.0%	-0.6%
10	5.9%	6.8%	8.3%	-1.5%
Total	100.0%	100.0%	100.0%	0.0%



David W. Hood  
Secretary

0204#054

**RULE**

**Department of Health and Hospitals  
Office of the Secretary**

**Organ Procurement Agency Coordination**

The Department of Health and Hospitals, Office of the Secretary, has adopted the following rule in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Anatomical Gift Act, R.S. 17:2354.4(J), and 42 CFR Part 482.45. This Rule is being submitted to fulfill the secretary's responsibility to establish rules to implement appropriate procedures to facilitate proper coordination among hospitals, the Louisiana-designated organ procurement organization, and tissue and eye banks.

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

**Rule**

**Definitions**

**Tissue Bank or Storage Facility**Ca nonprofit facility licensed or approved under the laws of any state for storage of human bodies or parts thereof for use in transplantation to individuals, medical education, research, or therapy.

**Department**Cthe Department of Health and Hospitals.

**Hospital**Ca hospital licensed, accredited, or approved under the laws of any state and includes a hospital operated

by the U.S. government, a state, or subdivision thereof, although not required to be licensed under state laws.

**Organ Procurement Organization (OPO)**Can organization that is designated by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), formerly Health Care Financing Administration, or its successor, to perform or coordinate the performance of surgical recovery, preservation, and transportation of organs, and that maintains a system for locating perspective recipients for available organ transplantation.

**Louisiana/Designated Organ Procurement Organization**Cthe organ procurement organization designated by CMS and recognized by the secretary of the Department of Health and Hospitals of Louisiana under R.S.17:2354.4(J).

**A Designated Requestor**Can individual who has completed a course offered or approved by the OPO and designed in conjunction with the tissue and eye bank community in the methodology for approaching potential donor families and requesting organ and tissue donation.

**Conditions for Participation**

In order to insure that the family of each potential donor is informed of its options to donate organs, tissues, or eyes or to decline to donate, the department adopts the procedures specified in the federally approved Medicare Conditions for Participation for Hospitals (42 CFR Part 482.45) to be followed by all hospitals in Louisiana. The individual designated by the hospital to initiate the request to the family must be an organ procurement representative or a designated requestor.

The Department of Health and Hospitals shall recognize the federally designated organ procurement organization. A letter by the CMS shall be presented to the secretary of the Department of Health and Hospitals upon certification of the

organ procurement organization. Any changes between certification periods shall be reported to the secretary within 30 working days.

The secretary shall compile and disseminate a list of those nonprofit organ and tissue banks that, in addition to the Louisiana designated OPO, shall be authorized to receive donations under this section. The organ procurement organization shall be authorized upon designation by the Health Care Finance Administration. The nonprofit tissue bank or eye bank must submit copies of the following to the Secretary for authorization:

1. Proof that a nonprofit tissue bank or eye bank registered in this state or any state as a 501-C-3 charitable organization with no direct ties to any for-profit tissue processor unless an approved nonprofit vehicle is unavailable.

2. A copy of the current accreditation letter by the American Association of Tissue Banking for those nonprofit tissue banks, and a current accreditation letter by the Eye Banks of America Association for the nonprofit eye banks.

Under the Medicare Conditions for Participation for Hospitals, the following procedures are to be implemented to facilitate proper coordination among hospitals, Louisiana designated OPO, and tissue and eye banks:

1. All hospitals will incorporate an agreement with the Louisiana designated OPO, under which it must notify in a timely manner, the OPO of individuals whose death is imminent or who have died in the hospital.

2. The OPO will determine medical suitability for organ donation under this agreement.

3. The hospital will incorporate an agreement with at least one nonprofit tissue bank and at least one non-profit eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes, as may be appropriate to assure that all useful tissues and eyes are obtained from potential donors, insofar as such an agreement does not interfere with organ procurement.

4. The Louisiana designated OPO will refer all appropriate referrals to the appropriate nonprofit tissue or eye bank which the OPO and hospital have incorporated an agreement with for those purposes.

David W. Hood  
Secretary

0204#055

**RULE**

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

Home and Community Based Services Waiver Program  
Adult Day Health Care Waiver  
Request for Services Registry

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services 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 adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implemented the Adult Day Health Care Waiver Program effective January 6, 1985. The Adult Day Health Care Waiver was designed to meet the individual needs of aged and functionally impaired adults by providing a variety of health, social and related support services in a protective setting. Candidates who meet all of the eligibility criteria are ranked in the order of the date on record when the candidate initially requested to be evaluated for waiver eligibility and placed on waiting lists maintained by the participating Adult Day Health Care centers. In order to facilitate the efficient management of the waiver waiting list, the department adopted an Emergency Rule to transfer responsibility for the Adult Day Health Care Waiver waiting lists to the Bureau of Community Supports and Services and establish a single state-wide request for services registry (*Louisiana Register*, Volume 27, Number 12). The department now proposes to adopt a Rule to continue the provisions contained in the December 3, 2001 Emergency Rule.

**Rule**

The Department of Health and Hospitals transfers responsibility for the waiting list for the Adult Day Health Care (ADHC) Waiver to the Bureau of Community Supports and Services (BCSS) and consolidates the approximately twenty-seven waiting lists into a centralized state-wide request for services registry that is maintained by region and arranged in order of the date of the initial request. Persons who wish to be added to the request for services registry shall contact a toll-free telephone number maintained by BCSS. Those persons on the existing waiting lists prior to the date of the transfer of responsibility to BCSS shall remain on the request for services registry in the order of the date on record when the candidate initially requested waiver services. When a candidate is listed on more than one waiting list, the earliest date on record shall be considered the date of initial request.

David W. Hood  
Secretary

0204#061

**RULE**

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

Home and Community Based Services Waiver Program  
Elderly and Disabled Adult Waiver  
Request for Services Registry

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services 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 adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Rule**

The Department of Health and Hospitals amends the January 1998 Rule to incorporate the transfer of

responsibility for the waiting list for the Elderly and Disabled Adult waiver to the Bureau of Community Supports and Services (BCSS) and consolidate the 64 waiting lists into a centralized state-wide request for services registry arranged in order of the date of the initial request. Persons who wish to be placed on the request for services registry shall contact a toll-free telephone number maintained by BCSS. Those persons on the waiting lists prior to the date of the transfer of responsibility to BCSS shall remain on the request for services registry in the order of the date on record when the candidate initially requested to be evaluated for waiver services.

David W. Hood  
Secretary

0204#062

#### **RULE**

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

#### **Home and Community Based Services Waiver Program Personal Care Attendant Waiver Request for Services Registry**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services 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 adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### **Rule**

The Department of Health and Hospitals transfers responsibility for the Personal Care Attendant (PCA) waiver waiting list to the Bureau of Community Supports and Services (BCSS) and consolidates the three waiting lists into a state-wide request for services registry arranged by degree of need and the date of the initial request. Persons who wish to be placed on the request for services registry shall contact a toll-free telephone number maintained by BCSS. Those persons on the existing waiting lists prior to the date of the transfer of responsibility to BCSS shall remain on the request for services registry in the order of degree of need score and the date on record when the candidate initially requested waiver services.

David W. Hood  
Secretary

0204#065

#### **RULE**

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

#### **Medicaid Eligibility Breast and Cervical Cancer Treatment Program**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing 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 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 establishes an optional eligibility group to provide medicaid eligibility to women who are in need of treatment for breast or cervical cancer, including pre-cancerous conditions and early stage cancer.

#### **Eligibility Criteria**

Regular income and resource criteria are not applicable for Medicaid benefits under this optional eligibility group. However, the applicant's income must be under 250 percent of the federal poverty level in order to qualify for screening under the Centers for Disease Control and Prevention's Breast and Cervical Cancer Early Detection Program.

Women must meet all of the following criteria in order to be considered for the optional eligibility group:

1. the woman must have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention's Breast and Cervical Cancer Early Detection Program and found to need treatment for either breast or cervical cancer, including pre-cancerous conditions and early stage cancer; and
2. she must be uninsured (or if insured, has coverage that does not include treatment of breast or cervical cancer) and ineligible under any of the mandatory medicaid eligibility groups; and
3. she must be under age 65.

#### **Coverage**

A woman who becomes eligible under this new optional category is entitled to full Medicaid coverage. Coverage is not limited to treatment of breast and cervical cancer.

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

David W. Hood  
Secretary

0204#063



**RULE**

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

**Pharmacy Program Average Wholesale  
Price Reimbursement Increase**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following Rule under 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 Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in April 1990 to amend the reimbursement methodology for drugs under the Louisiana Medicaid Pharmacy Program (*Louisiana Register*, Volume 16, Number 4). In compliance with Act 10 of the 1999 Regular Session of the Louisiana Legislature, the bureau amended the April 20, 1990 rule to limit payments for prescription drugs to the lower of: (1) average wholesale price (AWP) minus 10.5 percent for independent pharmacies and 13.5 percent for chain pharmacies; (2) Louisiana's maximum allowable cost (MAC) limitation plus the maximum allowable overhead cost (MAOC); (3) federal upper limits plus the maximum allowable overhead cost; or (4) providers' usual and customary charges to the general public. In addition, the definition of chain pharmacies was established as five or more medicaid enrolled pharmacies under common ownership (*Louisiana Register*, Volume 26, Number 6).

As a result of a budgetary shortfall, the bureau adopted a rule amending the June 20, 2000 rule to limit payments for prescription drugs to the lower of (AWP) minus 15 percent for independent pharmacies and 16.5 percent for chain pharmacies. In addition, the definition of chain pharmacies was changed from five or more to more than 15 medicaid enrolled pharmacies under common ownership (*Louisiana Register*, Volume 26, Number 8). As a result of the allocation of funds by the Legislature during the 2001 Regular Session, the bureau increased the reimbursement rate for prescription drugs under the Medicaid Program by amending the estimated acquisition cost formula from AWP minus 15 percent to AWP minus 13.5 percent for independent pharmacies and from AWP minus 16.5 percent to AWP minus 15 percent for chain pharmacies (*Louisiana Register*, Volume 27, Number 8). The bureau now proposes to adopt a rule to continue the provisions contained in the August 6, 2001 emergency rule.

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement rates for prescription drugs under the Medicaid Program by amending the estimated acquisition cost formula from average wholesale price (AWP) minus 15 percent to AWP minus 13.5 percent for independent pharmacies and from AWP minus 16.5 percent to AWP minus 15 percent for chain pharmacies. This adjustment

applies to single source drugs, multiple source drugs that do not have a state maximum allowable cost (MAC) or federal upper limit and those prescriptions subject to MAC overrides based on the physician's certification that a brand name product is medically necessary.

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

David W. Hood  
Secretary

0204#064

**RULE**

**Department of Health and Hospitals  
Office of Public Health**

**Identification of Hearing Impairment in Infants  
(LAC 48:V.Chapter 22)**

In accordance with the applicable provision of the Administrative Procedure Act, R.S. 49:950 et seq., and the Identification of Hearing Impairment in Infants, R.S. 46:2261 et seq., the Department of Health and Hospitals, Office of Public Health has revised procedures for the screening of infants to identify hearing impairment, testing of all newborns and referral of newborns failing screening for appropriate follow-up services and to ensure proper information distribution to parents, primary care physicians and interested groups.

Louisiana's Act 417 of 1992 mandated hearing screenings of all high-risk infants and rules and regulations were adopted to implement the program in accordance with the Administrative Procedure Act. On July 1, 1999, Act 417 was amended by Act 653 of the 1999 Regular Legislative Session to require universal hearing screening of all newborn infants, rather than screening of only those infants with high-risk factors.

It is necessary that new Rules be adopted to allow for the proper statewide implementation of universal newborn hearing screening as required by the amended legislative provisions as included in Act 653 of the 1999 Regular Legislative Session.

**Title 48**

**PUBLIC HEALTH GENERAL**

**Part V. Preventive Health Services**

**Subpart 7. Maternal and Child Health Services**

**Chapter 22. Identification of Hearing Impairment in Infants**

**§2201. Definitions**

\* \* \*

*Program* the Hearing, Speech and Vision Program within the office.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:2261-2267.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 19:1430 (November 1993), amended LR 28:837 (April 2002).

**§2203. Program for Identification of Hearing Loss in Infants**

A. The program will include the following.

1. The office will require a newborn hearing screening report to be used by the hospitals to report hearing screening results and risk status on all newborns to the risk registry. This form will include written material regarding hearing loss and a toll-free hotline phone number (V/TDD).

2. - 6. ...

B. Implementation

1. All birthing sites in Louisiana must be in compliance with this act by April 1, 2002.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 19:1431 (November 1993), amended LR 28:838 (April 2002).

**§2205. Procedures for Hospitals**

A. Hospitals shall complete the newborn screening report on all live births.

B. Hospitals shall conduct hearing screening on all newborn infants before discharge.

C. - D. ...

E. If an infant is born in one hospital and transferred to one or more hospital(s), the last hospital to which the infant is transferred before being discharged into the care of a parent, or guardian for purposes other than transport, must complete the newborn infant hearing report and perform the hearing screening.

F. If an infant is to be placed for adoption and is to be transferred to another hospital for adoption, the hospital at which the infant is born is to complete the newborn hearing screening report and perform the hearing screening (unless §2205.E above applies). The parent copy of the newborn hearing screening report shall be sent to the guardian.

G ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 19:1431 (November 1993), amended LR 28:838 (April 2002).

**§2207. Procedures for Other (Alternative) Birthing Sites**

A. ...

B. Hearing screening shall be performed at the alternative birthing site before discharge. The results of the screening shall be recorded on the newborn hearing screening report.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 19:1431 (November 1993), amended LR 28:838 (April 2002).

**§2209. Hearing Screening Procedures**

A. Personnel. Hearing screening will only be performed by:

1. board eligible or board certified physicians with special training in auditory brainstem response testing and/or otoacoustic emissions and in infant hearing testing. Evidence of training must be submitted to the office;

2. audiologists licensed by the Louisiana Board of Examiners for Speech Pathology and Audiology with special training in auditory brainstem response testing and/or otoacoustic emissions testing and in infant hearing testing. Evidence of training must be submitted to the office;

3. ...

B. Test Procedures. The following test procedures are the only acceptable methods for use in infant hearing screening:

1. Auditory Brainstem Response (ABR) either automated or non-automated;

2. Evoked Otoacoustic Emission (EOAE);

3. test levels, failure criteria and all other test parameters are set by protocols established by the office, upon recommendations of the State Advisory Council.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 19:1431 (November 1993), amended LR 28:838 (April 2002).

**§2210. Referral and Follow-Up**

A. Referrals for infants failing screening must be made to the infants primary care physician and a licensed audiologist within seven days of discharge by the birthing center.

B. Appropriate protocols and standards for diagnostic evaluations to determine hearing loss shall be established by the office, upon recommendations of the State Advisory Council.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:838 (April 2002).

**§2213. Risk Registry and Tracking**

A. - C. ...

D. The office will develop a system for reporting diagnosis of hearing loss by primary health care providers, audiologists and parents for children up to age 5.

E. - F. ...

G Non-Compliance And Penalties

1. The State Advisory Council shall recommend to the office methods of monitoring hospitals, physicians and audiologists for compliance with all sections of this statute.

2. The State Advisory Council shall report any hospital, physician or audiologist found to be non-compliant to the appropriate licensing, regulatory or other appropriate agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 19:1432 (November 1993), amended LR 28:838 (April 2002).

David W. Hood  
Secretary

0204#052

**RULE**

**Department of Health and Hospitals  
Office of Public Health  
Center for Environmental Health**

**Sanitary Code Chapter XIICWater Supplies  
(LAC 48:V.Chapter 73)**

Editor's Note: This Rule is being repromulgated in its entirety to correct printing errors. The original rule may be viewed on pages 502-508 of the March 20, 2002 edition of the *Louisiana Register*. Please note the effective date of this rule.

In accordance with the Louisiana Administrative Procedures Act, R.S. 49:950, et seq., The Department of Health and Hospitals, Office of Public Health, Center for Environmental Health, pursuant to the authority in R.S. 40:4, and authorized by R.S. 40:1148, herewith repeals the Rule entitled Water Treatment Plant Operator Certification consisting of the Louisiana Administrative Code, Title 48, Part V, sections 7301 through 7335, and adopts the following rule consisting of LAC, Title 48, Part V, Sections 7301 through 7339.

Also, under the authority of R. S. 40:4 and in accordance with R. S. 49:950 et seq., the Administrative Procedure Act, the Department of Health and Hospitals, Office of Public Health herewith amends Chapter XII (Water Supplies) of the Louisiana State Sanitary Code.

The following rules shall be effective April 1, 2002

**Title 48**

**PUBLIC HEALTH-GENERAL**

**Part V. Preventive Health Services**

**Subpart 21. Water and Wastewater Operator  
Certification**

**Chapter 73. Certification**

**§7301. Definitions**

A. Unless otherwise specifically provided herein, the following words and terms used in this Chapter are defined for the purposes thereof as follows.

*Committee of Certification*Cas defined in statue R.S. 40:1142.

*Community Sewerage System*Cany sewerage system which serves multiple connections and consists of a collection and/or pumping/transport system and treatment facility.

*Department*Cthe Louisiana Department of Health and Hospitals, Office of Public Health.

*Person*Can individual, a public or private corporation, an association, a partnership, a public body created by or pursuant to state law, the state of Louisiana, an agency or political subdivision of the state, a federally recognized Indian tribe, the United States government, a political subdivision of the United States government, and any officer, employee, or agent of one of those entities.

*Operator*Cthe individual, as determined by the Committee of Certification, in attendance on site of a water supply system or sewerage system and whose performance, judgment, and direction affects either the safety, sanitary quality, or quantity of water or sewage treated or delivered.

*Public Water System*Ca system for the provision to the public of water for potable purposes through pipes or other constructed conveyances, if such system has at least 15

service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:502 (March 2002), repromulgated LR 28:839 (April 2002)..

**§7303. Certification Requirements**

A. The basic requirements for certification are set forth in R.S. 40:1141-1151.

B. The Operator of any public water system or any community sewerage system shall hold current and valid professional certification(s) of the required category(s) at or above the level required for the total system and individual facility. Additionally, an operator shall demonstrate that, when not actually on site at the facility, he is capable of responding to that location within one hour of being notified that his presence is needed.

C. Systems operating multiple shifts are required to have a minimum of one certified operator present on each shift. Exact numbers of certified operators required may be determined by the committee of certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:502 (March 2002), repromulgated LR 28:839 (April 2002).

**§7305. Categories of Certification**

A. Certifications are offered in each of the following areas (categories), of qualification:

1. water production;
2. water distribution;
3. water treatment;
4. wastewater collection;
5. wastewater treatment.

B. Water production certifications are required on all facilities. For those systems which use groundwater as a source of raw water and which do not alter the physical, chemical or bacteriological quality of the water other than simple disinfection, operators will not be required to hold certificates for treatment in addition to production.

C. Water distribution certifications are required on all portions of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.

D. Water treatment certifications are required for all operators of facilities which use surface water as a source of raw water, as well as those groundwater systems that involve complex treatment and/or which in some way alters the physical, chemical or bacteriological quality of the water. Water Treatment certification shall not be required for groundwater systems for which the only type of treatment employed is simple disinfection, and where the well(s) has been determined to be not under the direct influence of surface water.

E. Wastewater treatment certifications are required on all facilities which provide for the treatment of wastewater and the reduction and/or handling of sludge removed from such wastewater.

F. Wastewater collection certifications are required on all components of a sewerage system except for the sewage treatment plant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:503 (March 2002), repromulgated LR 28:839 (April 2002).

**§7307. Levels (Classes) of Certification for Types of Facilities**

A. Required levels of certification for an operator, based on facility classification, are as follows:

Population Served	Facility Classification
<1,000	Class 1
1,001-5,000	Class 2
5,001-25,000	Class 3
Over 25,000	Class 4

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:840 (March 2002).

**§7309. Operator Qualifications C General (Education/Experience)**

A. Whereas R.S. 40:1141-1151 specifies minimum operator qualifications in years, these values have been converted to "points" for ease of integration with continuing education credits and substitutions between education and experience. Operator qualifications for the various levels of certification shall be determined by minimum point values as follows:

Certification Level	Required Points
Op-In-Training	0
Class 1	1
Class 2	2
Class 3	5
Class 4	8

NOTE: A minimum educational requirement of a High School Diploma (or G.E.D.) is applied to ALL levels of certification. Required point values for education and experience are in addition to this minimum level of education. Point value required for Classes 1 and 2 may be from experience alone although 25 percent of this value may be acquired from education credit. No more than 75 percent of the total required points for Classes 3 or 4 may be obtained from education or experience alone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002).

**§7311. Operator Qualifications C Substitutions/Assignment of Point Values**

A. Point values for education, continuing education, and experience are assigned as follows.

1. Education
  - a. Each year of formal college education (minimum of 30 semester hours) = 1 point
  - b. Each year of formal graduate level education = 1.5 points
  - c. Each semester hour (credit) for college-level courses = 0.033 point
  - d. Each 40-hour qualified, approved training course = 0.10 point

e. Each 8 hours of qualifying, approved continuing education = 0.02 point

f. Each 1 hour of qualifying, approved continuing education = 0.0025 point

2. Experience
  - a. Each year of qualifying operator experience = 1 point
  - b. Each year of qualifying related experience = 0.5 point
  - c. Each year of qualifying supervisory experience = 1.5 points

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002).

**§7313. Professional Certification**

A. All persons seeking professional certification must be employed or seeking employment by a water or wastewater utility.

B. Certificates must be displayed by the holder in a prominent place in the classified facility. Additionally, at such time as a certified operator is issued a certified operator identification card, the operator shall carry his identification card on their person while on duty in the classified facility. Failure to do so may be considered grounds for revocation of the certificate in accordance with R.S. 40:1145(D).

C. Certificates shall be valid only so long as the holder uses reasonable care, judgment, and knowledge in the performance of his/her duties. No certificate will be valid if obtained or renewed through fraud, deceit, or the submission of inaccurate qualification data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002).

**§7315. Limited Certificates**

A. Only those limited certificates issued prior to the effective date of these Rules, in compliance with R.S. 40:1141-1152 remain valid, and shall remain valid only for the system in which the operator was previously employed and for the conditions of operations and duties involved on the original effective date of this Rule.

B. Limited certificates shall be renewable upon application provided the requirements for renewal without reexamination for certificates of even grade are satisfied.

C. Persons granted limited certificates and renewals of limited certificates shall pay the same fees as are fixed for mandatory certificates of like grade.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002).

**§7317. Operator-in-Training**

A. Operator-in-Training certificates may be granted to newly hired personnel, who have not previously been certified, or who have not held any type of certification for in excess of two years, and who do not presently qualify for a professional or provisional certificate. Such individuals may make application for the appropriate category (water, wastewater) of operator-in-training certificate. The

certification officer will then begin maintaining records of all approved education, training and experience credits accumulated by the operator-in-training. An operator-in-training certificate shall be valid for a period of 24 months from the date of issue, and may be renewed in the same manner as provisional or professional certificates. Operators-in-training may not be designated as the operator of the system/facility.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1141-1151.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002).

#### **§7319. Provisional Certificate**

A. A provisional certificate may be issued to any applicant who successfully passes an examination. Provisional certificates shall not qualify an individual to serve as the operator of a facility.

B. A provisional certificate may be converted to a professional certificate if the certificate holder meets all qualifications and assumes the duties of an active operator of a water or wastewater system.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1141-1151.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:841 (April 2002).

#### **§7321. Examinations C General**

A. All operators wishing to become certified by the State of Louisiana, must pass an examination demonstrating they have the necessary knowledge, skills, judgement, and abilities as specified by the committee of certification. All exam questions will be validated by the committee of certification or their appointees.

B. Exams shall be conducted in the English language.

C. The committee of certification has established open examination periods for water and/or wastewater operators to be examined. They are as follows.

1. One annual open exam shall be conducted at the conclusion of the annual Louisiana Conference on Water Supply, Sewerage and Industrial Waste "Short Course," meeting which is held in various locations around the state.

2. One open exam shall be conducted at the conclusion of the Louisiana Rural Water Association Annual Conference.

3. Other open examinations may be scheduled at other locations as determined by the committee of certification based on their determination of need subject to provisions of §7305 of these Rules.

4. Application for examinations to be given following scheduled training courses, seminars, workshops, etc., (as listed in §7329 and §7331 of these Rules) will be considered on a case-by-case basis by the committee of certification.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1141-1151.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:505 (March 2002), repromulgated LR 28:841 (April 2002).

#### **§7323. Examinations C Individual Operator**

##### **Requirements**

A. Individual operators must make written application to the committee of certification to take each examination or series of examinations. The application forms will be made

available to the examinee prior to the exam period with ample time given to allow completion prior to the actual exam period. The operator (examinee) carries the responsibility for the accuracy of the information contained in the application.

B. Applicants for certification examinations must pay the prescribed exam fee at the conclusion of testing (see §7333 of these Rules).

C. All examinations shall be administered in the English language. Requests for examinations to be administered orally may be considered by the administrator, upon written request by an applicant, submitted at least 30 days in advance, with verifiable proof from a physician that the applicant has a medical condition temporarily preventing him from taking the examination in the conventional manner.

D. Exams shall be taken and passed in sequence from the Class 1 to the Class 4 in each category.

E. Applicants may not apply to take and may not take examinations for certification higher than one level above that for which they are currently qualified.

F. If an applicant takes an examination and fails to attain a passing grade (70 percent or higher), he must wait a minimum of 90 days before he can take another exam in the same category and level. After three failed attempts at the same examination, an applicant will be required to attend a 40-hour training course before retesting will be allowed.

G. All examinations will be graded by department personnel and retained for two years. The examinee will be notified of the results. Examinations will not be returned to the examinee, but may, upon written request, be reviewed in the Operator Certification Program Office in Baton Rouge within 30 days following receipt of the notification of results.

H. Individuals caught cheating during the operator certification examinations or found to have prejudiced these exams or applications in any way shall be entitled to an administrative hearing before the committee of certification. If the committee finds that valid grounds exist, it shall revoke the subject's current certificate, it may refuse to certify the applicant and it may reject future applications. As provided in the Administrative Procedure Act, an aggrieved party may seek judicial review of the committee of certification's action.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1141-1151.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:505 (March 2002), repromulgated LR 28:841 (April 2002).

#### **§7325. Application for Certification**

A. All applications for certificates shall be addressed to: Administrator, Operator Certification Program, Louisiana Department of Health and Hospitals, Office of Public Health, 6867 Bluebonnet Boulevard, Baton Rouge, LA 70810. Applications for certificates must be accompanied by the prescribed fees.

B. All initial applications for any category of either new certificates or renewal certificates received subsequent to the effective date of this Rule, shall be accompanied by a "Certification Law and Rules Examination" to be completed by the applicant as part of the application process.

C. Applicants who pass the required examinations, and meet the minimum education and experience requirements, and are actively employed by a water or wastewater system, will be notified that they may apply for the earned professional operator certification.

D. Applicants who pass an examination but do not meet the education and experience requirements will be notified of what education and/or experience and/or training is required to qualify. Such applicants, upon payment of the prescribed fee, will be issued a provisional certification in the classification(s) for which they have passed the examination(s). At whatever time the applicant qualifies, an application with the necessary fee must be submitted or re-examination may be required.

E. Individuals who have combined work experience in both water and wastewater may make written application to the certification committee for credit toward certification in either or both of the two categories. The work experience will be listed in a detailed resumé application which details the overlapping areas of work responsibility. This application will be certified by the immediate supervisor of the individual requesting certification. The committee of certification will rule on each individual application as presented. These applications will be reviewed twice a year by a screening subcommittee composed of members of the operator certification committee.

F. One individual may be designated as the operator over (several) more than one water or wastewater system or district provided that he can demonstrate that he is actively involved on a day-to-day basis in the operation of each of the systems, and is able to respond to the systems locations within one hour of notification that his presence is required.

G. Experience must be in actual water system or sewage system operation or its approved equivalent and must be in the field applying to the respective certificates. Experience as foreman or supervisor in most capacities in water and sewerage systems may be considered acceptable. Experience in purely clerical capacity, such as accounting, bookkeeping cannot be considered as acceptable experience. Experience in narrow technical capacities, such as laboratory technicians or meter readers may be considered for partial credit by the committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:505 (March 2002), repromulgated LR 28:841 (April 2002).

### **§7327. Renewal and Recertification**

A. Renewal Requirements. In order to qualify for renewal of certificates held in any and all classes, all operators of water and sewerage works shall enumerate, certify and provide evidence that he/she has attended a minimal number of contact hours of approved operator training for each certificate held during the previous two-year certification period. A minimum of 16 contact hours is required for renewal of any certifications held in water categories or 8 hours per certificate whichever is the greater. Likewise, a minimum of 16 contact hours is required for renewal of any certifications held in wastewater categories. Failure to attend the required training or failure to furnish the required information shall constitute grounds for refusal to renew the certificate. Approved training is defined as the completion of any of the training courses listed in §7329. It

is strongly recommended that course outlines (or lesson plans) for other proposed in-service training be submitted for approval prior to the proposed date of training.

B. Recertification. Operators for whom certification has been expired in excess of two years are not eligible to renew their license(s), and shall be required to reapply for certification under the provisions of this Rule. In such cases, applicants shall be re-examined and shall demonstrate compliance with appropriate education and experience requirements before any certificates will be issued. In those instances where an operator's license has previously been revoked by the committee, the committee shall recommend any additional requirements for recertification that are deemed appropriate, and rule on the operator's eligibility to reapply for a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:506 (March 2002), repromulgated LR 28:842 (April 2002).

### **§7329. Training C General**

A. Training Courses Available. To be approved for training credit by the Administrator of the Operator Certification Program, the training courses identified in Paragraph B of this Section must meet the following general requirements.

1. The administrator must have on file a copy of the course outline of the training course, seminar, workshop, etc. to make his approval decision.

2. Information must include dates, place held, sponsoring organization, speakers/instructors and time (length of subject), and target audience (category and levels of certification addressed).

3. No blanket approvals (from year to year) will be given or implied and a separate approval must be given by the Operator Certification Program each time training is given. On doubtful courses, the administrator will bring the matter to the committee of certification for disposition. (An aggrieved applicant may apply for an administrative hearing to be conducted by a panel of the committee of certification.)

4. Operators shall be responsible to assure the sponsoring organization submitting his certified transcript of training credits earned to the administrator.

B. Training courses, short courses, technical sessions, seminars, workshops, etc., recognized by both the committee of certification and department include, but are not limited to the following:

1. annual short course of the Louisiana Conference on Water Supply, Sewerage and Industrial Wastes;

2. regional conferences of one or more days sponsored and/or co-sponsored by the Louisiana Conference on Water Supply, Sewerage and Industrial Wastes;

3. American Water Works Association Annual Conferences, technical sessions, seminars and workshops;

4. National Association of Water Companies Annual Conferences seminars and workshops;

5. Southwest Section, American Water Works Association Annual Conference, technical sessions, seminars and workshops;

6. college or university and vocational-technical sponsored water and/or wastewater courses, as approved by the certification committee;

7. Water Environment Federation Annual Conference, regional meetings, technical sessions, seminars and workshops;

8. Louisiana Water Environment Association regional meetings, technical sessions, seminars and workshops;

9. Louisiana Rural Water Association annual training and technical conference, regional meetings, technical sessions, seminars and workshops;

10. Louisiana Environmental Training Center, at University of Louisiana at Lafayette, training courses, technical sessions, seminars and workshops;

11. regional meetings, technical sessions, seminars, workshops and/or training programs, sponsored and/or co-sponsored by the Department of Health and Hospitals, or the Department of Environmental Quality;

12. water and/or wastewater operator training courses approved for certification examinations by the committee of certification;

13. short schools, technical courses, seminars, workshops and training programs sponsored by other states.

C. A water and/or wastewater organization or utility not listed above may apply to the committee of certification for recognition and approval to conduct a training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:506 (March 2002), repromulgated LR 28:842 (April 2002).

### **§7331. Examinations in Conjunction with Training Courses**

A. Applicants for approved training courses may request that certification exams be conducted following the completion of the course. In order to obtain approval from the committee of certification, the applicant (sponsoring individual or organization) must comply with the following requirements and rules.

B. The applications must be submitted to: Administrator, Operator Certification Program, Louisiana Department of Health and Hospitals, Office of Public Health, 6867 Bluebonnet Boulevard, Baton Rouge, LA 70810.

C. Applications must be submitted 30 days prior to the beginning of the course.

D. No exam shall be conducted without prior written approval.

E. Blanket approval for training courses and exams will not be given by the committee of certification, i.e., each training course and each exam period must be approved according to these Rules.

F. No exam shall be approved to follow a training course consisting of less than 32 hours. An exception to this Rule may be granted to the Louisiana Conference on Water Supply, Sewerage and Industrial Waste as this organization and its sub-organizations comprise the official training arm of the committee of certification.

G. Approval will be given to conduct exams only for the classes and categories covered by the training course, i.e., for training in Class I, II, III or IV in production, treatment or distribution, or wastewater collection or treatment.

H. The classes and categories for which the course is designed must be stated in the application.

I. The applicant must submit a detailed course outline to include:

1. the goal of the training course;
2. which operators in water and/or wastewater would benefit from taking the course;
3. each subject to be covered;
4. a formal lesson plan for each subject area to be covered;
5. the number of hours covered in each subject;
6. what references will be supplied in the course;
7. what references and materials the student should bring to the course.

J. The applicant must submit the names of all instructors, and their qualifications, including their education and work experience credentials and their certification levels. Instructors shall possess, at a minimum, a "provisional" certification in the subject area covered; or, shall have completed a qualified instructor training course or equivalent; or, be specifically accepted by the committee based upon their credentials.

K. Only those examinations prepared under the auspices of the administrator and the committee of certification will be recognized for certification.

L. All examinations will be conducted and monitored by members of the staff of the department and/or members of the committee of certification. No exams will be conducted without the presence of a sufficient number of monitors approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:843 (April 2002).

### **§7333. Examination Fees**

A. All fees for examinations shall be paid to the committee of certification.

B. Examination Fees shall be established as authorized by the Legislature, but in no case shall be less than \$5 per exam.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:843 (April 2002).

### **§7335. Certification Fees**

A. Certificate fees, in addition to the examination fee, shall be:

1. collected for issuance, renewal and/or reciprocation of all classes of certificates. The amount of the certificate fee shall be as established by the legislature, but in no case shall be less than \$10 for certification in the first category in water and/or sewerage and an additional \$5 for each added category;

2. communities, municipalities, utilities and/or corporations may elect to utilize a flat fee system regarding their employees' certification. For a fee of \$50 per year for either field of water or sewerage or \$100 per year for both, all eligible operators may be certified, either initially or renewed. In addition to the flat fee, there will be a \$5 per certificate charge for each certificate issued. In the instance of the flat fee, the individual operators at each facility will

be the responsibility of the principal of the organization and shall be submitted with each renewal (flat fee) payment;

3. duplicate certificates will be issued for a fee of not less than \$5 per certificate.

4. water and wastewater operator certificates will be renewed on a two-year basis, with the fees remaining at the same annual rates as are currently in effect but collected every two years.

5. fees are to be paid in the form of a check or money order payable to the Committee of Certification, 6867 Bluebonnet Boulevard, Baton Rouge, LA 70810. Failure to attend the required training or failure to furnish the required information shall constitute grounds for refusal to renew the certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:843 (April 2002).

### **§7337. Reciprocity**

A. Reciprocity shall be granted at the discretion of the committee of certification, without examination, to holders of comparable certificates issued by other states, territories, or possessions of the United States. The applicant for a certificate under the reciprocity clause must submit his application on an official application blank, obtainable from the administrator. The application must be accompanied by the appropriate fee. The applicant must submit a copy of his certificate or other proof, satisfactory to the committee of certification that he holds a certificate issued by a governmental agency of another state, territory or possession of the United States. Such certificates must have been received after passage of an examination at least equivalent to that given by the Louisiana committee of certification for the level of competency for which application is made.

B. The burden of proof to submit sufficient information for the committee of certification's consideration shall be upon the applicant. If, after receiving such an application, the committee of certification is satisfied that the applicant qualifies for a certificate, it may, at its discretion award him a certificate in the appropriate grade. A reciprocal certificate will not ordinarily be issued unless the applicant is employed, or has accepted employment, in a Louisiana water or wastewater facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:844 (April 2002).

### **§7339. Notification**

A. Failure to receive any notices previously mentioned does not relieve the certificate holder or applicant from complying with the rules of the committee of certification. The burden is upon the certificate holder or applicant to provide the committee of certification with a current mailing address.

B. Any request for applications, training course approvals, reciprocity, etc., and/or questions on operator certification should be addressed to: Administrator, Operator Certification Program, DHH-OPH, 6867 Bluebonnet Boulevard, Baton Rouge, LA 70810.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:844 (April 2002).

The amendment to Chapter XII of the Sanitary Code, State of Louisiana reads as follows:

## **Sanitary Code, State of Louisiana Chapter XII (Water Supplies)**

\* \* \*

**12:003-2: Plant Supervision and Control:** All public water supplies shall be under the supervision and control of a duly certified operator as per requirements of the State Operator Certification Act, Act 538 of 1972, as amended (R.S. 40:1141-1151).

\* \* \*

David W. Hood  
Secretary

0204#038

### **RULE**

#### **Department of Insurance Office of the Commissioner**

Regulation 77C Medical Necessity Review Organizations  
(LAC 37:XIII.Chapter 62)

In accordance with the provisions of R.S. 49:953 of the Administrative Procedure Act and R.S. 22:3090, the Department of Insurance has adopted the following Rule regarding standards for determining the necessity of medical care or services recommended by health care providers. This Rule is necessary to establish reasonable requirements for limiting covered services included in a policy or contract of insurance coverage that do not misrepresent the benefits, advantages, conditions, or terms of the policy issued, or to be issued, based on medical necessity determinations. This Rule establishes the statutory requirements for health insurance issuers who seek to make such limitations in products sold in this state and establish the standards for Medical Necessity Review Organizations seeking licensure under Title 22 of the Louisiana Revised Statutes of 1950.

#### **Title 37**

#### **INSURANCE**

#### **Part XIII. Regulations**

#### **§6201. Purpose**

A. The purpose of this regulation is to enforce the statutory requirements of Title 22 of the Louisiana Revised Statutes of 1950 that require health insurance issuers who seek to establish exception criteria or limitations on covered benefits that are otherwise offered and payable under a policy or certificate of coverage sold in this state, by requiring a medical necessity determination to be made by the health insurance issuer. The statutory requirements also apply to any health benefit plan that establishes exception criteria or limitations on covered benefits that are otherwise offered and payable under a non-federal government benefit plan. Additionally, the statute establishes a process for Medical Necessity Review Organizations to qualify for state licensure and Independent Review Organizations to become certified by the Department of Insurance. The statutory requirements establish the intent of the legislature to assure



licensed health insurance issuers and non-federal government benefit plans meet minimum quality standards and do not utilize any requirement that would act to impinge on the ability of insureds or government employees to receive appropriate medical advice and/or treatment from a health care professional. This Regulation has no effect on the statutory requirements of R.S. 22:657. Emergency medical conditions as defined in R.S. 22:657 shall be covered and payable as provided therein.

This regulation implements the statutory requirements of R.S. §§22:2021, and Chapter 7 of Title 22 of the Louisiana Revised Statutes regarding the use of medical necessity to limit stated benefits in a fully insured health policy or HMO certificate.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:844 (April 2002).

### §6203. Definitions

**Adverse Determination**Ca determination that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and denied, reduced, or terminated by a reviewer based on medical necessity, appropriateness, health care setting, level of care, or effectiveness.

**Ambulatory Review**Ca review of health care services performed or provided in an outpatient setting.

**Appropriate Medical Information**Call outpatient and inpatient medical records that are pertinent to the evaluation and management of the covered person and that permit the Medical Necessity Review Organization to determine compliance with the applicable clinical review criteria. In the review of coverage for particular services, these records may include, but are not necessarily limited to, one or more of the following portions of the covered person's medical records as they relate directly to the services under review for medical necessity: admission history and physical examination report, physician's orders, progress notes, nursing notes, operative reports, anesthesia records, hospital discharge summary, laboratory and pathology reports, radiology or other imaging reports, consultation reports, emergency room records, and medication records.

**Authorized Representative**Ca person to whom a covered person has given written consent to represent the covered person in an internal or external review of an adverse determination of medical necessity. *Authorized Representative* may include the covered person's treating provider, if the covered person appoints the provider as his authorized representative and the provider agrees and waives in writing, any right to payment from the covered person other than any applicable copayment or coinsurance amount. In the event that the service is determined not to be medically necessary by the MNRO/IRO, and the covered person or his authorized representative thereafter requests the services, nothing shall prohibit the provider from charging the provider's usual and customary charges for all MNRO/IRO determined non-medically necessary services provided when such requests are in writing.

**Case Management**Ca coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions.

**Certification or Certify**Ca determination by a reviewer regarding coverage of an admission, continued stay, or other health care service for the purpose of determining medical necessity, appropriateness of the setting, or level of care.

**Clinical Peer**Ca physician or other health care professional who holds an unrestricted license in the same or an appropriate specialty that typically manages the medical condition, procedure, or treatment under review. Non-physician practitioners, including but not limited to nurses, speech and language therapists, occupational therapists, physical therapists, and clinical social workers, are not considered to be clinical peers and may not make adverse determinations of proposed actions of physicians (medical doctors shall be clinical peers of medical doctors, etc.).

**Clinical Review Criteria**Ca the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a reviewer to determine the necessity and appropriateness of covered health care services.

**Commissioner**Ca the commissioner of insurance.

**Concurrent Review**Ca review of medical necessity, appropriateness of care, or level of care conducted during a patient's stay or course of treatment.

**Covered Benefits or Benefits**Ca those health care services to which a covered person is entitled under the terms of a health benefit plan.

**Covered Person**Ca policyholder, subscriber, enrollee, or other individual covered under a policy of health insurance or HMO subscriber agreement.

**Discharge Planning**Ca the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility.

**Disclose**Ca to release, transfer, or otherwise divulge protected health information to any individual, entity, or person other than the individual who is the subject of the protected health information.

**Emergency Medical Condition**Ca a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in any of the following:

1. placing the health of the individual in serious jeopardy;
2. with respect to a pregnant woman, placing the health of the woman or her unborn child in serious jeopardy;
3. serious impairment to bodily function; or
4. serious dysfunction of any bodily organ or part.

**Entity**Ca an individual, person, corporation, partnership, association, joint venture, joint stock company, trust, unincorporated organization, any similar entity, agent, or contractor, or any combination of the foregoing.

**External Review Organization**Ca an independent review organization that conducts independent external reviews of adverse determinations and final adverse determinations and whose accreditation or certification has been reviewed and approved by the Department of Insurance.

*Facility* Can institution providing health care services or a health care setting, including but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing facilities, inpatient hospice facilities, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic health settings.

*Final Adverse Determination* Can adverse determination that has been upheld by a reviewer at the completion of the medical necessity review organization's internal review process as set forth in this Chapter.

*Health Benefit Plan* Group and individual health insurance coverage, coverage provided under a group health plan, or coverage provided by a nonfederal governmental plan, as those terms are defined in R.S. 22:250.1. *Health Benefit Plan* shall not include a plan providing coverage for excepted benefits as defined in R.S. 22:250.1(3).

*Health Care Professional* Ca physician or other health care practitioner licensed, certified, or registered to perform specified health services consistent with state law.

*Health Care Provider* or *Provider* Ca health care professional, the attending, ordering, or treating physician, or a facility.

*Health Care Services* Cservices for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

*Health Information* Cinformation or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to any of the following:

1. the past, present, or future physical, mental, or behavioral health or condition of a covered person or a member of the covered person's family;
2. the provision of health care services to a covered person; or
3. payment for the provision of health care services to a covered person.

*Health Insurance Coverage* Cbenefits consisting of medical care provided or arranged for directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organization agreement, or health maintenance organization contract offered by a health insurance issuer.

*Health Insurance Issuer* Can insurance company, including a health maintenance organization, as defined and licensed pursuant to Part XII of Chapter 2 of this Title, unless preempted as an employee benefit plan under the Employee Retirement Income Security Act of 1974.

*Medical Necessity Review Organization* or *MNRO* Ca health insurance issuer or other entity licensed or authorized pursuant to this Chapter to make medical necessity determinations for purposes other than the diagnosis and treatment of a medical condition.

*Prospective Review* Ca review conducted prior to an admission or a course of treatment.

*Protected Health Information* Chealth information that either identifies a covered person who is the subject of the information or with respect to which there is a reasonable basis to believe that the information could be used to identify a covered person.

*Retrospective Review* Ca review of medical necessity conducted after services have been provided to a patient, but shall not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

*Second Opinion* Can opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health service to assess the clinical necessity and appropriateness of the initial proposed health service.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:845 (April 2002).

### **§6205. Authorization or Licensure as an MNRO**

A. No health insurance issuer or health benefit plan, as defined in this chapter, shall act as an MNRO for the purpose of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar medical determinations unless authorized to act as an MNRO by the commissioner as provided in this Chapter. Benefits covered under a health benefit plan sold or in effect in this state on or after January 1, 2001 shall be limited, excluded, or excepted from coverage under any medical necessity determination requirement, appropriateness of care determination, level of care needed, or any other similar determination only when such determination is made by an authorized or licensed MNRO as provided in this Chapter.

B. No entity acting on behalf of or as the agent of a health insurance issuer may act as an MNRO for the purpose of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar determinations unless licensed as an MNRO by the commissioner as provided in this Chapter.

C. Any other entity may apply for and be issued a license under this Chapter to act as an MNRO for the purposes of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar determinations on behalf of a health benefit plan.

D. Any entity licensed or authorized as an MNRO shall be exempt from the requirements of R.S. 40:2721 through 2736. The licensure, authorization, or certification of any entity as an MNRO or independent or external review organization shall be effective beginning on the date of first application for all entities who receive formal written authorization, licensure, or certification by the Commissioner of Insurance. This provision shall remain in effect until December 31, 2001. Any application filed after December 31, 2001 shall become effective upon final approval by the Department of Insurance and not upon date of first application. Therefore any application submitted and filed after December 31, 2001, the licensure, authorization or certification of an entity as an MNRO or independent or external review organization shall be effective upon the date final approval is granted by the Commissioner of Insurance.

E. An integrated health care network or other entity contracting with a health insurance issuer for provision of

covered services under a risk sharing arrangement, shall be allowed to make initial adverse medical necessity determinations provided the health insurance issuer remains responsible for provision of internal and external review requirements and has submitted the information required under subsection B.5 of section 6207 for review and approval. In such instances, a covered person's request for an internal or external appeal of an adverse determination shall not require concurrence by a provider reimbursed under a risk sharing arrangement with the health insurance issuer.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:846 (April 2002).

#### **§6207. Procedure for Application to act as an MNRO**

A. Any applicant for licensure other than a health insurance issuer shall submit an application to the commissioner and pay an initial licensure fee as specified in §6211.D. The application shall be on a form and accompanied by any supporting documentation required by the commissioner and shall be signed and verified by the applicant. The information required by the application shall include:

1. the name of the entity operating as an MNRO and any trade or business names used by that entity in connection with making medical necessity determinations;

2. the names and addresses of every officer and director of the entity operating as an MNRO, as well as the name and address of the corporate officer designated by the MNRO as the corporate representative to receive, review, and resolve all grievances addressed to the MNRO;

3. the name and address of every person owning, directly or indirectly, five percent or more of the entity operating as an MNRO;

4. the exact street and mailing address of the principal place of business where the MNRO will operate and conduct medical necessity review determinations;

5. a general description of the operation of the MNRO, which includes a statement that the MNRO does not engage in the practice of medicine or acts to impinge or encumber the independent medical judgment of treating physicians or health care providers;

6. a description of the MNRO's program that evidences it meets the requirements of this Chapter for making medical necessity determinations and resolving disputes on an internal and external basis. (Such program description shall evidence compliance with requirements of §6213 of this Chapter);

7. a sample copy of any contract, absent fees charged, with a health insurance issuer, nonfederal government health benefit plan, or other group health plan for making determinations of medical necessity;

8. for each individual that will be designated to make adverse medical necessity determinations pursuant to this Chapter:

a. a description of the types of determinations that will be made by the individual and the type of license that will be required to support such determinations; and

b. a written policy statement that the individual shall have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character;

c. a written policy statement that the individual will be required to attest that no adverse determination will be made regarding any medical procedure or service outside the scope of such individual's expertise.

B. A health insurance issuer holding a valid certificate of authority to operate in this state may be authorized to act as an MNRO under the requirements of this Chapter following submission to the commissioner of appropriate documentation for review and approval that shall include, but need not be limited, to the following:

1. the exact street and mailing address of the principal place of business where the MNRO will operate and conduct medical necessity review determinations;

2. a general description of the operation of the MNRO which includes a statement that the MNRO does not engage in the practice of medicine or act to impinge upon or encumber the independent medical judgment of treating physicians or health care providers;

3. a description of the MNRO's program that evidences it meets the requirements of this Chapter for making medical necessity determinations and resolving disputes on an internal and external basis. (Such program description shall evidence compliance with requirements of Section 6213 of this Chapter);

4. a sample copy of any contract, absent fees charged, with another health insurance issuer for making determinations of medical necessity;

5. for each individual that will be designated to make adverse medical necessity determinations pursuant to this Chapter:

a. a description of the types of determinations that will be made by the individual and the type of license that will be required to support such determinations;

b. a written policy statement that the individual shall have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character; and

c. a written policy statement that the individual will be required to attest that no adverse determination will be made regarding any medical procedure or service outside the scope of such individual's expertise.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and, 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:847 (April 2002).

**§6211. Expiration and Renewal of License for Entities other than Health Insurance Issuers**

A. Licensure pursuant to this Chapter shall expire two years from the date approved by the commissioner unless the license is renewed for a two-year term as provided in this Section.

B. Before a license expires, it may be renewed for an additional two-year term if the applicant pays a renewal fee as provided in this Section and submits to the commissioner a renewal application on the form that the commissioner requires.

C. The renewal application required by the commissioner shall include, but need not be limited to, the information required for an initial application.

D. The fee for initial licensure and the fee for renewal of licensure shall each be \$1,500.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014 and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:848 (April 2002).

**§6213. Scope and Content of Medical Necessity Determination Process**

A. An MNRO shall implement a written medical necessity determination program that describes all review activities performed for one or more health benefit plans. The program shall include the following:

1. the methodology utilized to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services;
2. data sources and clinical review of criteria used in decision-making. The appropriateness of clinical review criteria shall be fully documented;
3. the process for conducting appeals of adverse determinations including informal reconsiderations;
4. mechanisms to ensure consistent application of review criteria and compatible decisions;
5. data collection processes and analytical methods used in assessing utilization of health care services;
6. provisions for assuring confidentiality of clinical and proprietary information;
7. the organizational structure, including any review panel or committee, quality assurance committee, or other committee that periodically accesses health care review activities and reports to the health benefit plan;
8. the medical director's responsibilities for day-to-day program management;
9. any quality management program utilized by the MNRO.

B. An MNRO shall file with the commissioner an annual summary report of its review program activities that includes a description of any substantive changes that have been implemented since the last annual report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:848 (April 2002).

**§6215. Medical Necessity Review Organization Operational Requirements**

A. An MNRO shall use documented clinical review criteria that are based on sound clinical evidence. Such criteria shall be evaluated at least annually and updated if necessary to assure ongoing efficacy. An MNRO may develop its own clinical review criteria or it may purchase, license or contract for clinical review criteria from qualified vendors. An MNRO shall make available its clinical review criteria upon request to the commissioner who shall be authorized to request affirmation of such criteria from other appropriate state regulatory agencies.

B. An MNRO shall have a medical director who shall be a duly licensed physician. The medical director shall administer the program and oversee all adverse review decisions. Adverse determinations shall be made only by a duly licensed physician or clinical peer. An adverse determination made by an MNRO in the second level review shall become final only when a clinical peer has evaluated and concurred with such adverse determination.

C. An MNRO shall issue determination decisions in a timely manner pursuant to the requirements of this Chapter. At the time of the request for review, an MNRO shall notify the requestor of all documentation required to make a medical review determination. The requestor may include the covered person, an authorized representative, or a provider. In the event that the MNRO determines that additional information is required, it shall notify the requestor by telephone, within one workday of such determination, to request any additional appropriate medical information required. An MNRO shall obtain all information required to make a medical necessity determination, including pertinent clinical information, and shall have a process to ensure that qualified health care professionals performing medical necessity determinations apply clinical review criteria consistently.

D. At least annually, an MNRO shall routinely assess the effectiveness and efficiency of its medical necessity determination program and report any deficiencies or changes to the commissioner. Deficiencies shall include complaint investigations by the department or grievances filed with the MNRO that prompted the MNRO to change procedures or protocols.

E. An MNRO's data systems shall be sufficient to support review program activities and to generate management reports to enable the health insurance issuer or other contractor to monitor its activities.

F. Health insurance issuers who delegate any medical necessity determination functions to an MNRO shall be responsible for oversight, which shall include, but not be limited to, the following:

1. a written description of the MNRO's activities and responsibilities, including reporting requirements;
2. evidence of formal approval of the medical necessity determination program by the health insurance issuer;
3. a process by which the health insurance issuer monitors or evaluates the performance of the MNRO.

G. Health insurance issuers who perform medical necessity determinations shall coordinate such program with

other medical management activities conducted by the health insurance issuer, such as quality assurance, credentialing, provider contracting, data reporting, grievance procedures, processes for assessing member satisfaction, and risk management.

H. An MNRO shall provide health care providers with access to its review staff by a toll-free number that is operational for any period of time that an authorization, certification, or approval of coverage is required.

I. When conducting medical necessity determinations, the MNRO shall request only the information necessary to certify an admission to a facility, procedure or treatment, length of stay, frequency, level of care or duration of health care services.

J. Compensation to individuals participating in a medical necessity determination program shall not contain incentives, direct or indirect, for those individuals to make inappropriate or adverse review determinations. Compensation to any such individuals shall not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

K. An adverse determination shall not be based on the outcome of care or clinical information not available at the time the certification was made, regardless of whether the covered person or provider assumes potential liability for the cost of such care while awaiting a coverage determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:848 (April 2002).

#### **§6217. Procedures for Making Medical Necessity Determinations**

A. An MNRO shall maintain written procedures for making determinations and for notifying covered persons and providers and other authorized representatives acting on behalf of covered persons of its decisions.

B.1. In no less than eighty percent of initial determinations, an MNRO shall make the determination within two working days of obtaining any appropriate medical information that may be required regarding a proposed admission, procedure, or service requiring a review determination. In no instance shall any determination of medical necessity be made later than thirty days from receipt of the request unless the patient's physician or other authorized representative has agreed to an extension.

2. In the case of a determination to certify a nonemergency admission, procedure, or service, the MNRO shall notify the provider rendering the service within one work day of making the initial certification and shall provide documented confirmation of such notification to the provider within two working days of making the initial certification.

3. In the case of an adverse determination of a nonemergency admission, the MNRO shall notify the provider rendering the service within one workday of making the adverse determination and shall provide documented confirmation of the notification to the provider within two working days of making the adverse determination.

C.1. For concurrent review determinations of medical necessity, an MNRO shall make such determinations within

one working day of obtaining the results of appropriate medical information that may be required.

2. In the case of a determination to certify an extended stay or additional services, the MNRO shall notify the provider rendering the service within one working day of making the certification and shall provide documented confirmation to the provider within two working days of the authorization. Such documented notification shall include the number of intended days or next review date and the new total number of days or services approved.

3. In the case of an adverse determination, the MNRO shall notify the provider rendering the service within one working day of making the adverse determination and shall provide documented notification to the provider within one workday of such notification. The service shall be authorized and payable by the health insurance issuer without liability, subject to the provisions of the policy or subscriber agreement, until the provider has been notified in writing of the adverse determination. The covered person shall not be liable for the cost of any services delivered following documented notification to the provider unless notified of such liability in advance.

D.1. For retrospective review determinations, the MNRO shall make the determination within 30 working days of obtaining the results of any appropriate medical information that may be required, but in no instance later than 180 days from the date of service. The MNRO shall not subsequently retract its authorization after services have been provided or reduce payment for an item or service furnished in reliance upon prior approval, unless the approval was based upon a material omission or misrepresentation about the covered person's health condition made by the provider or unless the coverage was duly canceled for fraud, misrepresentation, or nonpayment of premiums.

2. In the case of an adverse determination, the MNRO shall notify in writing the provider rendering the service and the covered person within five working days of making the adverse determination.

E. A written notification of an adverse determination shall include the principal reason or reasons for the determination, the instructions for initiating an appeal or reconsideration of the determination, and the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination. An MNRO shall provide the clinical rationale in writing for an adverse determination, including the clinical review criteria used to make that determination, to any party who received notice of the adverse determination and who follows the procedures.

F. An MNRO shall have written procedures listing the health or appropriate medical information required from a covered person or health care provider in order to make a medical necessity determination. Such procedures shall be given verbally to the covered person or health care provider when requested. The procedures shall also outline the process to be followed in the event that the MNRO determines the need for additional information not initially requested.

G. An MNRO shall have written procedures to address the failure or inability of a provider or a covered person to provide all necessary information for review. In cases where

the provider or a covered person will not release necessary information, the MNRO may deny certification.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:849 (April 2002).

#### **§6219. Informal Reconsideration**

A. In a case involving an initial determination or a concurrent review determination, an MNRO shall give the provider rendering the service an opportunity to request, on behalf of the covered person, an informal reconsideration of an adverse determination by the physician or clinical peer making the adverse determination. Allowing a 10-day period following the date of the adverse determination for requesting an informal reconsideration shall be considered reasonable.

B. The informal reconsideration shall occur within one working day of the receipt of the request and shall be conducted between the provider rendering the service and the MNRO's physician authorized to make adverse determinations or a clinical peer designated by the medical director if the physician who made the adverse determination cannot be available within one working day.

C. If the informal reconsideration process does not resolve the differences of opinion, the adverse determination may be appealed by the covered person or the provider on behalf of the covered person. Informal reconsideration shall not be a prerequisite to a standard appeal or an expedited appeal of an adverse determination.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:850 (April 2002).

#### **§6221. Appeals of Adverse Determinations; Standard Appeals**

A. An MNRO shall establish written procedures for a standard appeal of an adverse determination, which may also be known as a first level internal appeal. Such procedures shall be available to the covered person and to the provider acting on behalf of the covered person. Such procedures shall provide for an appropriate review panel for each appeal that includes health care professionals who have appropriate expertise. Allowing a 60-day period following the date of the adverse determination for requesting a standard appeal shall be considered reasonable.

B. For standard appeals, a duly licensed physician shall be required to concur with any adverse determination made by the review panel.

C. The MNRO shall notify in writing both the covered person and any provider given notice of the adverse determination, of the decision within thirty working days following the request for an appeal, unless the covered person or authorized representative and the MNRO mutually agree that a further extension of the time limit would be in the best interest of the covered person. The written decision shall contain the following:

1. the title and qualifying credentials of the physician affirming the adverse determination;

2. a statement of the reason for the covered person's request for an appeal;

3. an explanation of the reviewers' decision in clear terms and the medical rationale in sufficient detail for the covered person to respond further to the MNRO's position;

4. if applicable, a statement including the following:

a. a description of the process to obtain a second level review of a decision;

b. the written procedures governing a second level review, including any required time frame for review.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 22:2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:850 (April 2002).

#### **§6223. Second Level Review**

A. An MNRO shall establish a second level review process to give covered persons who are dissatisfied with the first level review decision the option to request a review at which the covered person has the right to appear in person before authorized representatives of the MNRO. An MNRO shall provide covered persons with adequate notice of this option, as described in Section 6221.C. Allowing a 30-day period following the date of the notice of an adverse standard appeal decision shall be considered reasonable.

B. An MNRO shall conduct a second level review for each appeal. Appeals shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer shall not have been involved in the initial adverse determination. A majority of any review panel used shall be comprised of persons who were not previously involved in the appeal. However, a person who was previously involved with the appeal may be a member of the panel or appear before the panel to present information or answer questions. The panel shall have the legal authority to bind the MNRO and the health insurance issuer to the panel's decision.

C. An MNRO shall ensure that a majority of the persons reviewing a second level appeal are health care professionals who have appropriate expertise. An MNRO shall issue a copy of the written decision to a provider who submits an appeal on behalf of a covered person. In cases where there has been a denial of service, the reviewing health care professional shall not have a material financial incentive or interest in the outcome of the review.

D. The procedures for conducting a second level review shall include the following.

1. The review panel shall schedule and hold a review meeting within 45 working days of receiving a request from a covered person for a second level review. The review meeting shall be held during regular business hours at a location reasonably accessible to the covered person. In cases where a face-to-face meeting is not practical for geographic reasons, an MNRO shall offer the covered person and any provider given a notice of adverse determination the opportunity to communicate with the review panel, at the MNRO's expense, by conference call, video conferencing, or other appropriate technology. The covered person shall be notified of the time and place of the review meeting in writing at least 15 working days in

advance of the review date; such notice shall also advise the covered person of his rights as specified in Paragraph three of this Subsection. The MNRO shall not unreasonably deny a request for postponement of a review meeting made by a covered person.

2. Upon the request of a covered person, an MNRO shall provide to the covered person all relevant information that is not confidential or privileged.

3. A covered person shall have the right to the following:

a. attend the second level review;

b. present his case to the review panel;

c. submit supporting material and provide testimony in person or in writing or affidavit both before and at the review meeting;

d. ask questions of any representative of the MNRO.

4. The covered person's right to a fair review shall not be made conditional on the covered person's appearance at the review.

5. For second level appeals, a duly licensed and appropriate clinical peer shall be required to concur with any adverse determination made by the review panel.

6. The MNRO shall issue a written decision to the covered person within five working days of completing the review meeting. The decision shall include the following:

a. the title and qualifying credentials of the appropriate clinical peer affirming an adverse determination;

b. a statement of the nature of the appeal and all pertinent facts;

c. the rationale for the decision;

d. reference to evidence or documentation used in making that decision;

e. the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination;

f. notice of the covered person's right to an external review, including the following:

i. a description of the process to obtain an external review of a decision;

ii. the written procedures governing an external review, including any required time frame for review.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:850 (April 2002).

#### **§6225. Request for External Review**

A. Each health benefit plan shall provide an independent review process to examine the plan's coverage decisions based on medical necessity. A covered person, with the concurrence of the treating health care provider, may make a request for an external review of a second level appeal adverse determination.

B. Except as provided in this Subsection, an MNRO shall not be required to grant a request for an external review until the second level appeal process as set forth in this Chapter has been exhausted. A request for external review of an adverse determination may be made before the covered person has exhausted the MNRO's appeal, if any of the following circumstances apply.

1. The covered person has an emergency medical condition, as defined in this Chapter.

2. The MNRO agrees to waive the requirements for the first level appeal, the second level appeal, or both.

C. If the requirement to exhaust the MNRO's appeal procedures is waived under Paragraph B.1 of this Section, the covered person's treating health care provider may request an expedited external review. If the requirement to exhaust the MNRO's appeal procedures is waived under Paragraph B.2 of this Section, a standard external review shall be performed.

D. Nothing in this Section shall prevent an MNRO from establishing an appeal process, approved by the commissioner, that provides persons who are dissatisfied with the first level review decision an external review in lieu of requiring a second level review prior to requesting such external review.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:851 (April 2002).

#### **§6227. Standard External Review**

A. Within sixty days after the date of receipt of a notice of a second level appeal adverse determination, the covered person whose medical care was the subject of such determination may, with the concurrence of the treating health care provider, file a request for an external review with the MNRO. Within seven days after the date of receipt of the request for an external review, the MNRO shall provide the documents and any information used in making the second level appeal adverse determination to its designated independent review organization. The independent review organization shall review all of the information and documents received and any other information submitted in writing by the covered person or the covered person's health care provider. The independent review organization may consider the following in reaching a decision or making a recommendation:

1. the covered person's pertinent medical records;

2. the treating health care professional's recommendation;

3. consulting reports from appropriate health care professionals and other documents submitted by the MNRO, covered person, or the covered person's treating provider;

4. any applicable generally accepted practice guidelines, including but not limited to those developed by the federal government or national or professional medical societies, boards, and associations;

5. any applicable clinical review criteria developed exclusively and used by MNRO that are within the appropriate standard for care, provided such criteria were not the sole basis for the decision or recommendation unless the criteria had been reviewed and certified by the appropriate licensing board of this state.

B. The independent review organization shall provide notice of its recommendation to the MNRO, the covered person or his authorized representative and the covered person's health care provider within 30 days after the date of receipt of the second level determination information subject

to an external review, unless a longer period is agreed to by all parties.

**AUTHORITY NOTE:** Promulgated in accordance with La. R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: La. R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:851 (April 2002).

#### **§6229. Expedited Appeals**

A. An MNRO shall establish written procedures for the expedited appeal of an adverse determination involving a situation where the time frame of the standard appeal would seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function. An expedited appeal shall be available to and may be initiated by the covered person, with the consent of the treating health care professional, or the provider acting on behalf of the covered person.

B. Expedited appeals shall be evaluated by an appropriate clinical peer or peers in the same or a similar specialty as would typically manage the case under review. The clinical peer or peers shall not have been involved in the initial adverse determination.

C. An MNRO shall provide an expedited appeal to any request concerning an admission, availability of care, continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility. Such emergency services may include services delivered in the emergency room, during observation, or other setting that resulted in direct admission to a facility.

D. In an expedited appeal, all necessary information, including the MNRO's decision, shall be transmitted between the MNRO and the covered person, or his authorized representative, or the provider acting on behalf of the covered person by telephone, telefacsimile, or any other available expeditious method.

E. In an expedited appeal, an MNRO shall make a decision and notify the covered person or the provider acting on behalf of the covered person as expeditiously as the covered person's medical condition requires, but in no event more than 72 hours after the appeal is commenced. If the expedited appeal is a concurrent review determination, the service shall be authorized and payable, subject to the provisions of the policy or subscriber agreement, until the provider has been notified of the determination in writing. The covered person shall not be liable for the cost of any services delivered following documented notification to the provider until documented notification of such liability is provided to the covered person.

F. An MNRO shall provide written confirmation of its decision concerning an expedited appeal within two working days of providing notification of that decision if the initial notification was not in writing. The written decision shall contain the information specified in R.S. 22:3079.C(1) through (3).

G. An MNRO shall provide reasonable access, within a period of time not to exceed one workday, to a clinical peer who can perform the expedited appeal.

H. In any case where the expedited appeal process does not resolve a difference of opinion between the MNRO and the covered person or the provider acting on behalf of the

covered person, such provider may request a second level appeal of the adverse determination.

I. An MNRO shall not provide an expedited appeal for retrospective adverse determinations.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:852 (April 2002).

#### **§6231. Expedited External Review of Urgent Care Requests**

A. At the time that a covered person receives an adverse determination involving an emergency medical condition of the covered person being treated in the emergency room, during hospital observation, or as a hospital inpatient, the covered person's health care provider may request an expedited external review. Approval of such requests shall not unreasonably be withheld.

B. For emergency medical conditions, the MNRO shall provide or transmit all necessary documents and information used in making the adverse determination to the independent review organization by telephone, telefacsimile, or any other available expeditious method.

C. In addition to the documents and information provided or transmitted, the independent review organization may consider the following in reaching a decision or making a recommendation:

1. the covered person's pertinent medical records;
2. the treating health care professional's recommendation;
3. consulting reports from appropriate health care professionals and other documents submitted by the MNRO, the covered person, or the covered person's treating provider;
4. any applicable generally accepted practice guidelines, including but not limited to those developed by the federal government or national or professional medical societies, boards, and associations.;
5. Any applicable clinical review criteria developed exclusively and used by the MNRO that are within the appropriate standard for care, provided such criteria were not the sole basis for the decision or recommendation, unless the criteria had been reviewed and certified by the appropriate state licensing board of this state.

D. Within 72 hours after receiving appropriate medical information for an expedited external review, the independent review organization shall do the following:

1. make a decision to uphold or reverse the adverse determination;
2. notify the covered person, the MNRO, and the covered person's health care provider of the decision. Such notice shall include the principal reason or reasons for the decision and references to the evidence or documentation considered in making the decision.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:852 (April 2002).

#### **§6233. Binding Nature of External Review Decisions**

A. Coverage for the services required under this Chapter shall be provided subject to the terms and conditions



generally applicable to benefits under the evidence of coverage under a health insurance policy or HMO subscriber agreement. Nothing in this Chapter shall be construed to require payment for services that are not otherwise covered pursuant to the evidence of coverage under the health insurance policy or HMO subscriber agreement or otherwise required under any applicable state or federal law.

B. An external review decision made pursuant to this Chapter shall be binding on the MNRO and on any health insurance issuer or health benefit plan that utilizes the MNRO for making medical necessity determinations. No entity shall hold itself out to the public as following the standards of a licensed or authorized MNRO that does not adhere to all requirements of this Chapter including the binding nature of external review decisions.

C. An external review decision shall be binding on the covered person for purposes of determining coverage under a health benefit plan that requires a determination of medical necessity for a medical service to be covered.

D. A covered person or his representatives, heirs, assigns, or health care providers shall have a cause of action for benefits or damages against an MNRO, health insurance issuer, health benefit plan, or independent review organization for any action involving or resulting from a decision made pursuant to this Chapter if the determination or opinion was rendered in bad faith or involved negligence, gross negligence, or intentional misrepresentation of factual information about the covered person's medical condition. Causes of action for benefits or damages for actions involving or resulting from a decision made pursuant to this Chapter shall be limited to the party acting in bad faith, or involved in negligence, gross negligence or intentional misrepresentation of factual information about the covered person's medical condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:852 (April 2002).

### **§6235. Minimum Qualifications for Independent Review Organizations**

A. The licensure, authorization, or certification of any entity as an MNRO or independent or external review organization shall be effective beginning on the date of first application for all entities who receive formal written authorization, licensure, or certification by the Commissioner of Insurance. This provision shall remain in effect until December 31, 2001. Any application filed after December 31, 2001 shall become effective upon final approval by the Department of Insurance and not upon date of first application. Therefore any application submitted and filed after December 31, 2001, the licensure, authorization or certification of an entity as an MNRO or independent or external review organization shall be effective upon the date final approval is granted by the Commissioner of Insurance. To qualify to conduct external reviews for an MNRO, an independent review organization shall meet the following minimum qualifications:

1. develop written policies and procedures that govern all aspects of both the standard external review process and

the expedited external review process that include, at a minimum, the following:

a. procedures to ensure that external reviews are conducted within the specified time frames and that required notices are provided in a timely manner;

b. procedures to ensure the selection of qualified and impartial clinical peer reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases;

c. procedures to ensure the confidentiality of medical and treatment records and clinical review criteria;

d. procedures to ensure that any individual employed by or under contract with the independent review organization adheres to the requirements of this Chapter;

2. establish a quality assurance program;

3. establish a toll-free telephone service to receive information related to external reviews on a twenty-four-hour-day, seven-day-a-week basis that is capable of accepting, recording, or providing appropriate instruction to incoming telephone callers during other than normal business hours.

B. Any clinical peer reviewer assigned by an independent review organization to conduct external reviews shall be a physician or other appropriate health care provider who meets the following minimum qualifications:

1. be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

2. be knowledgeable about the recommended health care service or treatment through actual clinical experience that may be based on either of the following:

a. the period of time spent actually treating patients with the same or similar medical condition of the covered person;

b. the period of time that has elapsed between the clinical experience and the present.

3. hold a nonrestricted license in a state of the United States and, in the case of a physician, hold a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the external review;

4. have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character.

C. In addition to the requirements of Subsection A of this Section, an independent review organization shall not own or control, be a subsidiary of, in any way be owned or controlled by, or exercise control with a health insurance issuer, health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

D. In addition to the other requirements of this Section, in order to qualify to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor the clinical peer reviewer assigned by the independent organization to conduct the external review shall have a material professional, familial, or financial interest with any of the following:

1. the MNRO that is the subject of the external review;
2. any officer, director, or management employee of the MNRO that is the subject of the external review;
3. the health care provider or the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review;
4. the facility at which the recommended health care service or treatment would be provided;
5. the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review;
6. the covered person who is the subject of the external review.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 22:2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:853 (April 2002).

### **§6237. External Review Register**

A. An MNRO shall maintain written records in the aggregate and by health insurance issuer and health benefit plan on all requests for external review for which an external review was conducted during a calendar year, hereinafter referred to as the "register". For each request for external review, the register shall contain, at a minimum, the following information:

1. a general description of the reason for the request for external review;
2. the date received;
3. the date of each review;
4. the resolution;
5. the date of resolution;
6. except as otherwise required by state or federal law,

the name of the covered person for whom the request for external review was filed.

B. The register shall be maintained in a manner that is reasonably clear and accessible to the commissioner.

C. The register compiled for a calendar year shall be retained for the longer of three years or until the commissioner has adopted a final report of an examination that contains a review of the register for that calendar year.

D. The MNRO shall submit to the commissioner, at least annually, a report in the format specified by the commissioner. The report shall include the following for each health insurance issuer and health benefit plan:

1. the total number of requests for external review;
2. the number of requests for external review resolved and their resolution;
3. a synopsis of actions being taken to correct problems identified.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:854 (April 2002).

### **§6239. Emergency Services**

A. Emergency services shall not be limited to health care services rendered in a hospital emergency room.

B. When conducting medical necessity determinations for emergency services, an MNRO shall not disapprove emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of such services if a prudent lay person acting reasonably would have believed that an emergency medical condition existed. With respect to care obtained from a non-contracting provider within the service area of a managed care plan, an MNRO shall not disapprove emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of the services if a prudent lay person would have reasonably believed that use of a contracting provider would result in a delay that would worsen the emergency or if a provision of federal, state, or local law requires the use of a specific provider.

C. If a participating provider or other authorized representative of a health insurance issuer or health benefit plan authorizes emergency services, the MNRO shall not subsequently retract its authorization after the emergency services have been provided or reduce payment for an item, treatment, or service furnished in reliance upon approval, unless the approval was based upon a material omission or misrepresentation about the covered person's health condition made by the provider of emergency services.

D. Coverage of emergency services shall be subject to state and federal laws as well as contract or policy provisions, including co-payments or coinsurance and deductibles.

E. For immediately required post-evaluation or post-stabilization services, an MNRO shall provide access to an authorized representative twenty-four hours a day, seven days a week, to facilitate review.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:854 (April 2002).

### **§6241. Confidentiality Requirements**

A. An MNRO shall annually provide written certification to the commissioner that its program for determining medical necessity complies with all applicable state and federal laws establishing confidentiality and reporting requirements.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 22:2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:854 (April 2002).

### **§6243. Severability**

A. If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation that can be given effect without the invalid provisions, item, or application.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statute of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:854 (April 2002).

**§6245. Effective Date**

A. This regulation shall become effective upon final publication in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statute of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:855 (April 2002).

J. Robert Wooley  
Acting Commissioner

0204#049

**RULE**

**Department of Public Safety and Corrections  
Board of Private Investigator Examiners**

Private Investigator Continuing Education  
(LAC 46:LVII.518)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 37:3505.B.(1), the Louisiana Department of Public Safety and Corrections, Louisiana State Board of Private Investigator Examiners, has amended Part LVII of Title 46, amending Chapter 5, Section 518, to require licensees to attend eight hours of continuing education every year (not every two years as the current law requires) and to further require renewal applications for each year to show compliance with this continuing education requirement.

This rule and regulation is an amendment to the initial rules and regulations promulgated by the Louisiana State Board of Private Investigator Examiners.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LVII. Louisiana State Board of Private Investigator  
Examiners**

**Chapter 5. Application, Licensing, Training,  
Registration and Fees**

**§518. Continuing Education**

A. Each licensed private investigator is required to complete a minimum of eight hours of approved investigative educational instruction within the one year period immediately prior to renewal in order to qualify for a renewal license.

B. Each licensed private investigator is required to complete and return the LSBPIE Continuing Educational Compliance form with the request for license renewal each year. The form shall be signed under penalty of perjury and shall include documentation of each hour of approved investigation educational instruction completed.

C. Any licensee who wishes to apply for an extension of time to complete educational instruction requirements must submit a letter request setting forth reasons for the extension request to the Executive Director of the LSBPIE 30 days prior to license renewal. The Training Committee shall rule on each request. If an extension is granted, the investigator shall be granted 30 days to complete the required hours.

Hours completed during a 30 day extension shall only apply to the previous year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505.B.(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 22:371 (May 1996), amended LR 27:1016 (July 2001), LR 28:855 (April 2002).

Charlene Mora  
Chairman

0204#017

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

Electronic Cards, General Credit Provisions  
(LAC 42:III.201)

The Louisiana Gaming Control Board has adopted LAC 42:III.201 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 42**

**LOUISIANA GAMING**

**Part III. Gaming Control Board**

**Chapter 2. Electronic Cards**

**§201. General Credit Provisions**

A. No Casino Operator, Casino Manager or licensee, either directly or through any bank, financial institution, credit card company or similar entity, shall issue electronic cards or smart cards that have the capability of allowing patrons to access any line of credit or account, debit an account, or obtain credit through a credit agreement or otherwise allow any patron to incur debt in any manner not provided in the respective Casino Operator's, Casino Manager's or licensee's internal controls as approved by the division.

B. All electronic cards or smart cards issued by the Casino Operator, Casino Manager or any licensee for the purpose of wagering shall be prepaid with a fixed dollar amount that shall not be susceptible of being increased by patrons without purchasing additional value in a manner consistent with the respective Casino Operator's, Casino Manager's or licensee's internal controls as approved by the division.

C. Electronic cards or smart cards issued by the Casino Operator, Casino Manager or any licensee shall be used only for wagering at the respective Casino Operator's, or licensee's property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 28:855 (April 2002).

Hillary J. Crain  
Chairman

0204#011

**RULE**

**Department of Public Safety and Corrections  
Corrections Services**

**Lost Property Claims (LAC 22:I.369)**

The Department of Public Safety and Corrections, Corrections Services, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended the Lost Property Claim Rule.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 3. Adult and Juvenile Services**

**Subchapter A. General**

**§369. Lost Property Claims**

A. The purpose of this section is to establish a uniform procedure for handling "lost property claims" filed by inmates in the custody of the Department of Public Safety and Corrections. All wardens are responsible for implementing and advising inmates and affected employees of its contents.

B. When an inmate suffers a loss of personal property, he may submit a claim to the warden. The claim should be submitted on the attached Form A. The claim must include the date the loss occurred, a full statement of the circumstances which resulted in the loss of property, a list of the items which are missing, the value of each lost item, and any proof of ownership or value of the property available to the inmate. All claims for lost personal property must be submitted to the warden within 10 days of discovery of the loss.

C. Under no circumstances will an inmate be compensated for an unsubstantiated loss, or for a loss which results from the inmate's own acts or for any loss resulting from bartering, trading, selling to, or gambling with other inmates.

D. The warden, or his designee, will assign an employee to investigate the claim. The investigative officer will investigate the claim fully and will submit his report and recommendations to the warden, or his designee.

E. If a loss of an inmate's personal property occurs through the negligence of the institution and/or its employees, the inmate's claim may be processed in accordance with the following procedures.

**1. Monetary**

a. The warden, or his designee, will recommend a reasonable value for the lost personal property (with the exception of personal clothing) as described on Form A. Liability will be pursuant to Department Regulation No. C-03-007 "Inmate Personal Property List, State Issued Items, Procedures for the Reception, Transfer, and Disposal of Inmate Personal Belongings;"

b. Forms B and C will be completed and submitted to the inmate for his signature; and

c. The claim will be submitted to the assistant secretary of Adult Services for review and final approval.

**2. Nonmonetary**

a. The inmate is entitled only to state issue where state issued items are available.

b. The institution's liability for any lost inmate clothing will be limited to the following.

i. For inmates processed through HRDC/WRDC/FRDC prior to March 31, 2000, replacement is limited to state issue where state issue is available.

ii. For inmates received through HRDC/WRDC/FRDC on or after March 31, 2000, the state does not assume liability for any personal clothing.

c. The warden, or his designee, will review the claim and determine whether or not the institution is responsible.

d. Form B will be completed and submitted to the inmate for his signature.

e. Form C will be completed and submitted to the inmate for his signature when state issue replacement has been offered.

F. If the warden, or his designee, determines that the institution and/or its employees are not responsible for the inmate's loss of property, the claim will be denied, and Form B will be submitted to the inmate indicating the reason. If the inmate is not satisfied with the resolution at the unit level, he may indicate by checking the appropriate box on Form B and submitting it to the screening officer within five days of receipt. The screening officer will provide the inmate with an acknowledgment of receipt and date forwarded to the assistant secretary of Adult Services. A copy of the inmate's original Lost Personal Property Claim (Form A) and Lost Personal Property Claim Response (Form B) and other relevant documentation will be attached.

**G Form A CLost Personal Property Claim**

FORM A

LOST PERSONAL PROPERTY CLAIM

1. Inmate: \_\_\_\_\_  
(Inmate's Name, DOC #, and location)

2. Date of Loss: \_\_\_\_\_

3. Circumstances which resulted in the loss of personal property:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Items lost (include description) and value:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: False claims or false representations of lost items' value will subject the inmate to disciplinary action.

5. Must attach proof of ownership and proof of value.

6. A claim must be submitted within 10 days of the date of loss. The claim is to be submitted to the Warden.

SUBMITTED BY: \_\_\_\_\_  
Inmate's Signature      DOC #      Date

H. Form BC Lost Personal Property Claim Response

FORM B

LOST PERSONAL PROPERTY CLAIM RESPONSE

CLAIM # \_\_\_\_\_  
DATE: \_\_\_\_\_

TO: \_\_\_\_\_  
(Inmate's Name, DOC # and location)  
FROM: \_\_\_\_\_

Your request for reimbursement/settlement/replacement of your lost personal property has been reviewed with the below recommended actions:

DENIED

- \_\_\_\_\_ Your records were reviewed and no proof of ownership is indicated
- \_\_\_\_\_ Unallowable item at this institution
- \_\_\_\_\_ Clothing/items improperly marked according to inmate posted policy
- \_\_\_\_\_ Item illegally obtained
- \_\_\_\_\_ Investigation reveals loss resulted from barter, gambling, or sale
- \_\_\_\_\_ Investigation has proved your claim invalid or unsubstantiated
- \_\_\_\_\_ Loss resulted in irresponsibility on your part to keep personal items secure in footlocker, cell, etc.
- \_\_\_\_\_ Other \_\_\_\_\_

APPROVED

- \_\_\_\_\_ You are being offered state issue items as replacement for the items reported missing
- \_\_\_\_\_ Monetary settlement in the amount of \$ \_\_\_\_\_ will be processed
- \_\_\_\_\_ Other \_\_\_\_\_

Signature of Investigating Officer \_\_\_\_\_

WARDEN

Inmate's Signature      DOC #      \_\_\_\_\_      Date

I am not satisfied with this decision and wish to appeal to the Assistant Secretary of Adult Services

I. Form CC Agreement

FORM C

AGREEMENT

I, \_\_\_\_\_, (Inmate's name and DOC #), having filed a claim for lost property on \_\_\_\_\_ do hereby acknowledge receipt of \_\_\_\_\_ as full settlement, compromise, and discharge of any and all liability which exists or which might exist, and do hereby agree to release and discharge the State of Louisiana, Department of Public Safety and Corrections, and any and all of its agents, representatives, officers, and employees from any and all liability for compensation, damages, and all other amounts, if any, which might be due me by reason of the loss reported on \_\_\_\_\_ (date) (whether the liability, if any, be in damages, tort, or otherwise, or whether the liability, if any, be under the laws of the State of Louisiana, or the laws of the United States.) I agree to have this claim processed and settled in accordance with the terms set forth in the agreement.

WITNESSES:

\_\_\_\_\_  
Inmate's Signature      DOC #  
\_\_\_\_\_  
Date

WARDEN'S APPROVAL \_\_\_\_\_

SECRETARY'S APPROVAL \_\_\_\_\_  
(necessary only for monetary settlement)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 19:657 (May 1993), amended LR 28:856 (April 2002).

Richard L Stalder  
Secretary

0204#074

**RULE**

**Department of Public Safety and Correction  
Office of Adult Services**

Adult Administrative Remedy Procedure  
(LAC 22:I.325)

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 15:1171 et seq., Corrections Administrative Remedy Procedure, and Administrative Procedures Act, R.S. 49:950 et seq., has adopted the Adult Administrative Remedy Procedure. Prior LAC 22:I.325, Administrative Remedy Procedure, is now located at LAC 22:I.324.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 3. Adult and Juvenile Services  
Subchapter A. General**

**§325. Adult Administrative Remedy Procedures**

**A. Administrative Remedy Procedure**

1. On September 18, 1985, the Department of Public Safety and Corrections installed in all of its adult institution a formal grievance mechanism for use by all inmates committed to the custody of the Department. The process bears the name Administrative Remedy Procedure (ARP). Inmates are required to use the procedure before they can proceed with a suit in Federal and State Courts.

2. Inmates are encouraged to continue to seek solutions to their concerns through informal means, but in order to insure their right to use the formal procedure, they should make their request to the warden in writing within a 30 day period after an incident has occurred. If, after filing in the formal procedure an inmate receives a satisfactory response through informal means, the inmate may request (in writing) that the warden cancel his formal request for an administrative remedy.

3. All inmates may request information about or assistance in using the procedure from their classification officer or from a counsel substitute who services their living area.

4. Original letters of request to the wardens should be as brief as possible. Inmates should present as many facts as possible to answer all questions (who, what, when, where, and how) concerning the incident. If a request is unclear or the volume of attached material is too great, it may be rejected and returned to the inmate with a request for clarity or summarization on one additional page. The deadline for this request begins on the date the resubmission is received in the warden's office.

5. Once an inmate's request procedure, he must use the manila envelope that is furnished to him with this First Step to continue in the procedure. The flaps on the envelope may be tucked into the envelope for mailing to the facility's ARP Screening Officer.

B. Purpose. Corrections Services has established the Administrative Remedy Procedure through which an inmate may seek formal review of a complaint which relates to any aspect of his incarceration if less formal methods have not resolved the matter. Such complaints and grievances include, but are not limited to any and all claims seeking monetary, injunctive, declaratory, or any other form of relief authorized by law and by way of illustration includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies, or statutes. Through this procedure, inmates shall receive reasonable responses and where appropriate, meaningful remedies.

C. Applicability. Inmates may request administrative remedies to situations arising from policies, conditions, or events within the institution that affect them personally. There are procedures already in place within all DPS&C institutions which are specifically and expressly incorporated into and made a part of this Administrative Remedy Procedure. These procedures shall constitute the administrative remedies for disciplinary matters and lost property claims. The following matters shall not be appealable through this Administrative Remedy Procedure:

1. court decisions and pending criminal matters over which the Department has no control or jurisdiction;
2. Pardon Board and Parole Board decisions (under Louisiana law, decisions of these boards are discretionary, and may not be challenged);
3. Louisiana Risk Review Panel recommendations;
4. Lockdown Review board decisions (inmates are furnished written reasons at the time this decision is made as to why they are not being released from lockdown, if that is the case. The board's decision may not be challenged. There are, however, two bases for request for administrative remedy on Lockdown Review Board hearings):
  - a. that no reasons were given for the decision of the board;
  - b. that a hearing was not held within 90 days from the offender's original placement in lockdown or from the last hearing. There will be a 20-day grace period attached hereto, due to administrative scheduling problems of the Board; therefore, a claim based on this ground will not be valid until 110 days have passed and no hearing has been held. As used in this procedure, the following definitions shall apply.

D. Definitions

*ARP Screening Officer* Ca staff member, designated by the warden, whose responsibility is to coordinate and facilitate the Administrative Remedy Procedure process.

*Grievance* Ca written complaint by an inmate on the inmate's own behalf regarding a policy applicable within an institution, a condition within an institution, an action involving an inmate of an institution, or an incident occurring within an institution.

*Emergency Grievance* Ca matter in which disposition within the regular time limits would subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate.

*Days* Ccalendar days.

E. Policy. All inmates, regardless of their classification, impairment, or disability, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the warden to provide appropriate assistance for inmates with literacy deficiencies or language barriers. No action shall be taken against an inmate for the good faith use of or good faith participation in the procedure. Reprisals of any nature are prohibited. Inmates are entitled to pursue, through the grievance procedure, a complaint that a reprisal occurred.

1. Reviewers. If an inmate registers a complaint against a staff member, that employee shall not play a part in making a decision on the request. However, this shall not prevent the employee from participating at the step one level, since the employee complained about may be the best source from which to begin collecting information on an alleged incident. If the inmate is not satisfied with the decision rendered at the First Step, he should pursue his grievance to the Assistant Secretary of Adult Services via the Second Step.

2. Communications. Inmates must be made aware of the system by oral explanation at orientation and should have the opportunity to ask questions and receive oral answers. The procedures shall be posted in writing in areas readily accessible to all inmates.

3. Written Responses. At each stage of decision and review, inmates will be provided written answers that explain the information gathered or the reason for the decision reached along with simple directions for obtaining further review.

F. Procedure

1. Screening. The ARP Screening Officer will screen all requests prior to assignment to the First Step. The screening process should not unreasonably restrain the inmate's opportunity to seek a remedy.

a. If a request is rejected, it must be for one of the following reasons, which shall be noted on Form ARP.

- i. This matter is not appealable through this process, such as:

- (a) court decisions;
- (b) Parole Board/Pardon Board decisions;
- (c) Louisiana Risk Review Panel recommendations;
- (d) Lockdown Review Board (refer to section on "Applicability" [Subsection C]).

ii. There are specialized administrative remedy procedures in place for this specific type of complaint, such as:

- (a) disciplinary matters;
- (b) lost property claims.
- iii. It is a duplicate request.
- iv. In cases where a number of inmates have filed similar or identical requests seeking administrative remedy, it is appropriate to respond only to the inmate who filed the initial request. Copies of the decision sent to other inmates who filed requests simultaneously regarding the same issue

will constitute a completed action. All such requests will be logged.

v. The complaint concerns an action not yet taken or a decision which has not yet been made.

vi. The inmate has requested a remedy for another inmate.

vii. The inmate has requested a remedy for more than one incident (a multiple complaint).

viii. Established rules and procedures were not followed.

ix. If an inmate refuses to cooperate with the inquiry into his allegation, the request may be denied due to lack of cooperation.

x. There has been a time lapse of more than 30 days between the event and the initial request, unless waived by the warden.

b. Notice of the initial acceptance or rejection of the request will be furnished to the inmate.

2. Initiation of Process. Inmates should always try to resolve their problems within the institution informally, before initiating the formal process. This informal resolution may be accomplished through discussions with staff members, etc. If the inmate is unable to resolve his problems or obtain relief in this fashion, he may initiate the formal process.

a. The method by which this process is initiated is by a letter from the inmate to the warden. For purposes of this process, a letter is:

i. any form of written communication which contains this phrase: "This is a request for administrative remedy;" or

ii. Form ARP-1 at those institutions that wish to furnish forms for commencement of this process.

b. No request for administrative remedy shall be denied acceptance into the Administrative Remedy Procedure because it is or is not on a form; however, no letter as set forth above shall be accepted into the process unless it contains the phrase: "This is a request for administrative remedy."

c. Nothing in this procedure should serve to prevent or discourage an inmate from communicating with the warden or anyone else in the Department of Public Safety and Corrections. The requirements set forth in this document for acceptance into the Administrative Remedy Procedure are solely to assure that incidents which may give rise to a cause of action will be handled through this two step system of review. All forms of communication to the warden will be handled, investigated, and responded to as the warden deems appropriate.

d. If an inmate refuses to cooperate with the inquiry into his allegation, the request may be denied by noting the lack of cooperation on the appropriate Step Response and returning it to the inmate.

3. Multiple Requests. If an inmate submits multiple requests during the review of a previous request, they will be logged and set aside for handling at such time as the request currently in the system has been exhausted at the Second Step or until time limits to proceed from the First Step to the Second Step have lapsed. The warden may determine whether a letter of instruction to the inmate is in order.

4. Reprisals. No action shall be taken against anyone for the good faith use of or good faith participation in the procedure.

a. The prohibition against reprisals should not be construed to prohibit discipline of inmates who do not use the system in good faith. Those who file requests that are frivolous or deliberately malicious may be disciplined under the appropriate rule violation described in the DPS&C "Disciplinary Rules and Procedures for Adult Inmate."

#### G Process

##### 1. First Step (Time Limit 40 days)

a. The inmate commences the process by writing a letter to the warden, in which he briefly sets out the basis for his claim, and the relief sought (refer to section on "Procedure C Initiation of Process" [Subsection F] for the requirements of the letter.) The inmate should make a copy of his letter of complaint and retain it for his own records. The original letter will become a part of the process, and will not be returned to the inmate. The institution is not responsible for furnishing the inmate with copies of his letter of complaint. This letter should be written to the warden within 30 days of an alleged event. (This requirement may be waived when circumstances warrant. The warden, or his designee, will use reasonable judgment in such matters.) The requests shall be screened by the ARP Screening Officer and a notice will be sent to the inmate advising that his request is being processed or is being rejected. The warden may assign another staff person to conduct further fact-finding and/or information gathering prior to rendering his response. The warden shall respond to the inmate within 40 days from the date the request is received at the First Step.

b. For inmates wishing to continue to the Second Step, sufficient space will be allowed on the response to give a reason for requesting review at the next level. There is no need to rewrite the original letter of request as it will be available to all reviewers at each Step of the process.

##### 2. Second Step (Time Limit 45 days)

a. An inmate who is dissatisfied with the First Step response may appeal to the Secretary of the Department of Public Safety and Corrections by so indicating that he is not satisfied in the appropriate space on the response form and forwarding it to the ARP Screening Officer within 5 days of receipt of the decision. A final decision will be made by the Secretary and the inmate will be notified within 45 days of receipt. A copy of the Secretary's decision will be sent to the warden.

b. If an inmate is not satisfied with the Second Step response, he may file suit in District Court. The inmate must furnish the administrative remedy procedure number on the court forms.

##### 3. Monetary Damages

a. Department of Public Safety and Corrections based upon credible facts within a grievance or complaint filed by an inmate, may determine that such an inmate is entitled to monetary damages where monetary damages are deemed by the Department as appropriate to render a fair and just remedy.

b. Upon a determination that monetary damages should be awarded, the remaining question is quantum, or the determination as to the dollar amount of the monetary damages to be awarded. The matter of determining quantum

shall be transferred to the Office of Risk Management of the Division of Administration which shall then have the discretionary power to determine quantum. The determination reached by the Office of Risk Management shall be returned to the Department of Public Safety and Corrections for a final decision. If a settlement is reached, a copy of the signed release shall be given to the warden on that same date.

#### 4. Deadlines and Time Limits

a. No more than 90 days from the initiation to completion of the process shall elapse, unless an extension has been granted. Absent such an extension, expiration of response time limits shall entitle the inmate to move on to the next Step in the process. Time limits begin on the date the request is assigned to a staff member for the First Step response.

b. An inmate may request an extension in writing of up to five days in which to file at stage of the process. This request shall be made to the ARP Screening Officer for an extension to initiate a request; to the warden for the First Step and to the Assistant Secretary of Adult Services for the Second Step. The inmate must certify valid reasons for the delay, which reasons must accompany his untimely request. The issue of sufficiency of valid reasons for delay shall be addressed at each Step, along with the substantive issue of the complaint.

c. The warden may request permission for an extension of not more than five days from the Assistant Secretary of Adult Services for the step one review/response. The inmate must be notified in writing of such an extension.

d. In no case may the cumulative extensions exceed 25 days.

#### 5. Problems of an Emergency Nature

a. If an inmate feels he is subjected to emergency conditions, he must send an emergency request to the shift supervisor. The shift supervisor shall immediately review the request and forward the request to the level at which corrective action can be taken. All emergency requests shall be documented on an Unusual Occurrence Report.

b. Abuse of the emergency review process by an inmate shall be treated as a frivolous or malicious request and the inmate shall be disciplined accordingly. Particularly, but not exclusively, matters relating to administrative transfers and time computation disputes are not to be treated as emergencies for purposes of this procedure, but shall be expeditiously handled by the shift supervisor, when appropriate.

#### 6. Sensitive Issues

a. If the inmate believes the complaint is sensitive and would be adversely affected if the complaint became known at the institution, he may file the complaint directly with the Assistant Secretary of Adult Services (Second Step level). The inmate must explain, in writing, his reason for not filing the complaint at the institution.

b. If the Assistant Secretary of Adult Services agrees that the complaint is sensitive, he shall accept and respond to the complaint. If he does not agree that the

complaint is sensitive, he shall so advise the inmate in writing, and return the complaint to the warden's office. The inmate shall then have five days from the date the rejection memo is received in the warden's office to submit his request through regular channels (beginning with the First Step if his complaint is acceptable for processing in the Administrative Remedy Procedure).

#### 7. Records

a. Administrative Remedy Procedure records are confidential. Employees who are participating in the disposition of a request may have access to records essential to the resolution of requests. Otherwise, release of these records is governed by R.S. 15:574.12.

b. All reports, investigations, etc., other than the inmate's original letter and responses, are prepared in anticipation of litigation, and are prepared to become part of the attorney's work product for the attorney handling the anticipated eventual litigation of this matter and are therefore confidential and not subject to discovery.

c. Records will be maintained as follows.

i. A computerized log will be maintained which will document the nature of each request, all relevant dates, and disposition at each step. Each institution will submit reports on Administrative Remedy Procedure activity in accordance with Department Regulation No. C-05-001 "Activity Reports/Unusual Occurrence Reports-Operations Units-Adult."

ii. Individual requests and disposition, and all responses and pertinent documents shall be kept on file at the institution or at Headquarters.

iii. Records shall be kept at least three years following final disposition of the request.

8. Transferred Inmates. When an inmate has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution will complete the processing through the First Step. The warden of the receiving institution will assist in communication with the inmate.

9. Discharged Inmates. If an inmate is discharged before the review of an issue that affects the inmate after discharge is completed, or if he files a request after discharge on such an issue, the institution will complete the processing and will notify the inmate at his last known address. All other requests shall be considered moot when the inmate discharges, and shall not complete the process.

10. Annual Review. The warden shall annually solicit comments and suggestions on the processing, the efficiency and the credibility of the Administrative Remedy Procedure from inmates and staff. A report with the results of such review shall be provided to the Assistant Secretary of Adult Services.

H. Effective Date. Only ARP requests filed on or after the effective date of this Regulation, as adopted pursuant to the Administrative Procedures Act, shall be governed by this procedure. All ARP requests filed prior to the effective date will be administered in accordance with the provisions of LAC 22:I.324, formerly LAC 22:I. 325, Administrative Remedy Procedure.



I. Request for Administrative Remedy Form (ARP-1)

ARP-1

ADMINISTRATIVE REMEDY PROCEDURE  
THIS IS A REQUEST FOR ADMINISTRATIVE REMEDY

Inmate's Name DOC # Date of Incident/Complaint  
Place and Time of Incident/Complaint  
Describe Nature of Complaint (i.e. WHO, WHAT, WHEN, WHERE, and HOW)  
Inmate's Signature DOC # Date

TO: \_\_\_\_\_  
Inmate's Name and DOC #  
( ) ACCEPTED: Please respond to the inmate within 40 days.  
( ) REJECTED: Your request has been rejected for the following reason:  
Date \_\_\_\_\_ ARP Screening Officer

J. First Step Response Form (ARP-2)

ARP-2

ADMINISTRATIVE REMEDY PROCEDURE  
FIRST STEP RESPONSE FORM

TO: \_\_\_\_\_  
FROM: \_\_\_\_\_  
Inmate's Name DOC # Living Unit  
First Step Respondent Title  
Response to Request Dated \_\_\_\_\_ Received by Inmate \_\_\_\_\_  
Instructions to Inmate: If you are not satisfied with this response, you may go to Step Two by checking below and forwarding to the ARP Screening Officer within 5 days of your receipt of this decision.  
( ) I am not satisfied with this response and wish to proceed to Step Two.  
REASON:  
Date \_\_\_\_\_ Inmate's Signature \_\_\_\_\_ DOC # \_\_\_\_\_

K. Second Response Form (ARP-3)

ARP-3

ADMINISTRATIVE REMEDY PROCEDURE  
SECOND STEP RESPONSE FORM

TO: \_\_\_\_\_  
Inmate's Name DOC # Living Unit  
Response to Request Dated \_\_\_\_\_, Received in this office on \_\_\_\_\_  
Date \_\_\_\_\_ Secretary \_\_\_\_\_

AUTHORITY NOTE: Promulgated in accordance with R.S. 1171, et seq.  
HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 28:857 (April 2002).

Richard Stalder  
Secretary

0204#075

**RULE**

**Department of Public Safety and Correction  
Office of Adult Services**

Juvenile Administrative Remedy Procedure  
(LAC 22:I.326)

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 15:1171, et seq. Corrections Administrative Remedy Procedure, and Administrative Procedures Act, R.S. 49:950 et seq., has adopted a Juvenile Administrative Remedy Procedure.

**Title 22  
CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections  
Chapter 3. Adult and Juvenile Services  
Subchapter A. General**

**§326. Juvenile Administrative Remedy Procedure**  
A. Purpose. The purpose of this regulation is to establish an administrative remedy procedure specific to juvenile offenders through which an offender may seek formal review of a complaint which relates to most aspects of his stay in secure care if less formal procedures have not resolved the matter.

B. Applicability. Assistant secretary/Office of Youth Development, wardens, Youth Programs Compliance Division staff and employees and offenders of each juvenile institution.

### C. Definitions

**ARP Coordinator**—A staff member designated by the Warden whose responsibility is to coordinate and facilitate the ARP process.

**Business Days**—Monday through Friday.

**Calendar Days**—consecutive days including weekends and holidays.

**Case Manager**—A staff member whose primary responsibilities include assisting offenders.

**Emergency Grievance**—A matter in which disposition within the regular time limits would subject the offender or others to substantial risk of personal injury, or cause other serious or irreparable harm.

**Grievance**—A written complaint on an offender's behalf regarding a policy, condition, action, or incident occurring within an institution that affects the offender personally.

**Initiation of the ARP Process**—for a particular complaint, the administrative remedy procedure shall commence the day the request is accepted in the ARP process.

**Offender**—A person incarcerated in a juvenile correctional institution.

**Youth Programs Compliance Division (YPCD)**—A division located at the Office of Youth Development Headquarters in Baton Rouge. Employees of this division are responsible for monitoring the ARP process.

**Sensitive Issue**—A complaint which the offender believes would adversely affect him if it became known at the institution.

### D. Policy

1. The administrative remedy procedure for juveniles has been established for offenders to seek formal review of a complaint which relates to most aspects of their incarceration. Such complaints and grievances include, but are not limited to, any and all claims seeking monetary, injunctive, declaratory, or any other relief authorized by law. By way of illustration, this includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, lost personal property, denial of publications, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies or statutes. Through this procedure, offenders shall receive reasonable responses and where appropriate, meaningful remedies.

2. Offenders may request administrative remedies to situations arising from policies, conditions, or events within the institution that affect them personally. Disciplinary reports are not grievable and must be handled through the disciplinary appeal system. Court decisions and pending criminal and adjudication matters over which the Department has no control or jurisdiction shall not be appealable through this administrative remedy procedure.

3. All offenders, regardless of their classification, impairment or handicap, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the warden to provide appropriate assistance for offenders with literacy deficiencies or language barriers. No action shall be taken against an offender for the good faith use of or good faith participation in the procedure. Reprisals of any nature are prohibited. Offenders are entitled to pursue, through this grievance procedure, a complaint that a reprisal occurred.

4. All offenders may request information and obtain assistance in using the administrative remedy procedure from his case manager, counselor, or other staff member. Nothing in this administrative remedy procedure will serve to prevent or discourage an offender from communicating with the warden or anyone else in the Department.

### E. General Procedures

1. Dissemination. New employees and incoming offenders must be made aware of the administrative remedy procedure in writing and by oral explanation at orientation and have the opportunity to ask questions and receive oral answers. A simplified version of the administrative remedy procedure will be provided in booklet form to the offenders during the orientation process. This version of the procedure shall also be posted in areas readily accessible to all employees and offenders.

2. Informal Resolution. Offenders are encouraged to resolve their problems within the institution informally, before initiating the formal ARP process. This informal resolution may be sought by talking to his case manager, counselor, or other staff member. An attempt at informal resolution does not affect the timeframe for filing an ARP; therefore, the offender and staff member assisting with informal resolution must be alert to the 30 calendar day filing timeframe so that the opportunity to file an ARP is not missed when it appears that the situation will not be informally resolved before the expiration of the filing period.

#### 3. Initiation of ARP

a. An ARP is initiated by completing the first part of the Juvenile ARP Form (see Subsection N). No request for ARP shall be denied acceptance because it is not on a form; however, all requests must contain a statement or phrase to the effect: "This is a request for administrative remedy"; "This is a request for ARP"; or "ARP." Upon receipt by the ARP Coordinator, any such request will be attached to an ARP form.

b. The offender has 30 calendar days after the incident occurred in which to file a complaint. The ARP is considered "filed" upon receipt by the ARP Coordinator or designee. This includes those ARPs placed in the ARP or grievance box over the weekend or on a legal holiday. The ARP forms shall be available at designated sites at each institution and from case managers.

c. The offender shall complete the first part of the form outlining the problem and remedy requested. His case manager, counselor, or other staff member will be available for assistance in completing the form at each stage of the process.

d. If additional space is needed for completing any part of the form, another page of paper may be used and attached to the original form. The offender must give the completed, original form to his case manager or place it in the designated collection site to be picked by the ARP Coordinator.

e. Offenders released from secure care prior to filing their ARP should send the ARP directly to the ARP Coordinator. The ARP must be postmarked within 30 days or received within the 30 calendar day timeframe, if not mailed.

4. Screening of Requests. The ARP Coordinator will screen all requests prior to the step one review/response. If the same complaint is received from different offenders, each must be reviewed as an individual complaint. If the

ARP is rejected, the reason(s) for rejection shall be noted on the Juvenile ARP Form. Copies of ARP acceptances, rejections, etc. will be maintained by the ARP Coordinator. The Youth Programs Compliance Division will be copied on all rejections. A request may be rejected for one or more of the following reasons (See Part 10, "Judicial Review," for consequences of rejection).

a. The complaint pertains to a disciplinary matter, court decision or a judge's order in the offender's case.

b. The complaint concerns an action not yet taken or decision which has not yet been made.

c. There has been a time lapse of more than 30 calendar days between the event and receipt of the initial request.

d. The date of the event is not on the form. In this case, the form will be returned to the offender to have the correct date noted, however, the original 30 day time limit will still apply.

e. The offender has requested an administrative remedy for another offender.

f. A request is unclear. If this occurs, the request may be rejected and returned to the offender with a request for clarity. The deadline for this request will begin on the date the re-submission is received by the ARP Coordinator (within five calendar days in a secure facility and 10 calendar days if the offender has been released).

g. An offender refuses to cooperate with the inquiry into his allegation. If this occurs, the request may be rejected by noting the lack of cooperation on the Juvenile ARP Form and returning it to the offender.

h. The request is a duplicate of a previous request submitted by the same offender.

i. The request contains several unrelated complaints. Normally, an offender should not include more than one complaint in a single ARP. The ARP Coordinator has the discretion to accept or reject the ARP if it contains several unrelated complaints.

5. Reprisals. No action shall be taken against any offender for the good faith use of or good faith participation in the ARP. The prohibition against reprisals should not be construed to prohibit discipline of offenders who do not use the system in good faith. Those who file requests that are, as determined by the ARP Coordinator, frivolous or deliberately malicious may be disciplined under the appropriate rule violation contained in the "Disciplinary Rules and Procedures for Juvenile Offenders."

F. Step One (Maximum Time Limit C21 Calendar Days). ARP Coordinator's Review and warden's Response

1. The offender will begin the process by completing the first part of a Juvenile ARP Form, which will briefly set out the basis for the claim, and the relief sought. The form must be submitted within 30 calendar days of the incident which caused the grievement. The 30-day requirement may be waived by the warden when circumstances warrant, i.e. if the offender is ill for an extended period of time or if a significant, unusual event affects the offender's ability to file the ARP. The offender may also request a five calendar day extension from the ARP Coordinator if additional time is needed to prepare the ARP.

2. The original Juvenile ARP Form submitted by the offender will become part of the process, and will not be

returned to the offender until the warden's response (Step One) has been finalized.

3. ARPs shall be screened and logged by the ARP Coordinator. If appropriate for handling, the ARP Coordinator or fact-finding person assigned by the ARP Coordinator will begin fact-finding, including communication with the various program managers for program specific complaints, if needed. The ARP Coordinator will send notice to the offender via a copy of the Juvenile ARP Form regarding the status (acceptance/rejection) of the request. The warden should be kept apprised of the status of the ARP throughout the process.

4. ARPs filed by an attorney must include proof of representation in the form of a signed pleading, a letter signed by the offender's parent or guardian advising of the retention of the attorney or some other legal authorization for the attorney's representation. The ARP Coordinator or fact-finding person cannot interview the offender without contacting the attorney to give the attorney an opportunity to be present during the ARP Coordinator/fact-finding person's interview with the offender. The offender may not be interviewed without the attorney (unless the attorney waives his presence) for a minimum of two business days after the staff's contact with the attorney. If the attorney cannot be available within this timeframe, the ARP process will proceed as usual. If no proof of representation is attached to the ARP, the 48-hour waiting period is not required.

5. If the offender advises the ARP Coordinator or fact-finding person during the investigation that he has spoken with an attorney about the ARP, the interview must cease. The ARP Coordinator or fact-finding person will obtain the attorney's name and telephone number from the offender and contact the attorney following the procedures described in the preceding paragraph.

6. The ARP Coordinator will submit the ARP, supporting documentation and recommendation to the warden for final step one action, which must be completed within 21 calendar days of receipt of the ARP by the ARP Coordinator. Emergency and medical, safety or abuse-related requests should be handled expeditiously. Abuse-related requests should also be copied to the Project Zero Tolerance Investigators for verification that an investigation has been or is being conducted (if appropriate to the circumstances.)

7. The warden may return the Juvenile ARP Form to the ARP Coordinator for additional information or further review prior to rendering the response

8. Once the warden's response has been entered onto the original Juvenile ARP Form, the form will be returned to the ARP Coordinator. The ARP Coordinator will log and forward the original to the offender, keep a copy for the ARP file and send a copy to the appropriate section of the institution, if applicable. Copies of documents gathered in preparation of the review and response to the grievance will be maintained in the ARP file.

9. Unless the offender appeals to step two, no further action is needed at this level.

G Step Two (Maximum Time Limit C21 Calendar Days). Secretary's Response

1. An offender who is dissatisfied with the step one decision may appeal to the Secretary. Within 10 days of

receipt of the step one decision, the offender must complete the next part of the original ARP noting the request for the step two review and provide it to his case manager or place it in the designated collection site for the ARP Coordinator to pick up. His case manager or other staff member will be available to assist as needed with filing the appeal.

2. The ARP Coordinator will retain a copy for the ARP file, log and mail the original form along with copies of any supporting documentation directly to the Secretary or his designee. For the purpose of the step two response, this authority has been delegated by the Secretary to the Assistant Secretary of the Office of Youth Development (OYD).

3. A final decision will be made by the Assistant Secretary/OYD and the offender will be notified of the decision by mail (copy of the ARP form) postmarked within 21 calendar days of the Assistant Secretary's receipt of the appeal. The Assistant Secretary/OYD will retain a copy of the ARP and return the original to the ARP Coordinator. The ARP Coordinator will copy the decision to the warden, offender's attorney (if ARP was filed by the attorney), and to the ARP file. The ARP Coordinator will also insure the original response is sent to the offender and obtain the offender's signed acknowledgment of receipt.

#### H. Judicial Review.

1. If an offender's ARP is rejected or if he is not satisfied with the step two response, he may seek judicial review of the decision pursuant to R.S. 15:1177 et seq. within 30 calendar days after receipt and signing acknowledgment of receipt of the decision.

2. In these cases, the ARP Coordinator will notify the offender's parents or guardian and attorney (if applicable), in writing, that the departmental grievance procedure has been exhausted.

#### I. Timeframes and Extensions

1. An offender may make a written request to the ARP Coordinator for an extension of up to five calendar days in which to initiate an ARP. He may make a written request to the warden for an extension of up to five calendar days in which to appeal to the Secretary. (This does not limit the warden's discretion under Section 8.A. to grant any filing timeframe waiver that he deems appropriate.) The warden must certify valid reasons for the delay.

2. The warden may make a written request to the Assistant Secretary/OYD for an extension of up to seven calendar days for the step one review/response. The offender must be notified in writing of such an extension. The Assistant Secretary/OYD may extend time needed for his response when such is deemed necessary. However, in no case may the cumulative extensions exceed 30 calendar days. This does not include waivers granted by the warden due to the offender's illness or other significant, unusual events.

3. Unless an extension has been granted, no more than 42 calendar days shall elapse from the ARP coordinator's receipt of the ARP to completion of the step two process. Absent such an extension, expiration of response time limits shall entitle the offender to move on to the next step in the process.

#### J. Sensitive Issues

1. If the offender believes his complaint is sensitive and he would be adversely affected if it became known at

the institution, he may file the complaint directly with the Assistant Secretary/OYD. The offender must explain, in writing, the reason for not filing the complaint at the institution.

2. If the Assistant Secretary/OYD agrees that the complaint is sensitive, he shall accept and respond to the complaint. If he does not agree that the complaint is sensitive, he shall so advise the offender in writing, and return the complaint. When this occurs, the Assistant Secretary/OYD shall also send a copy of this communication to the warden and to the ARP Coordinator. The ARP Coordinator will insure that the decision is delivered to the offender and obtain the offender's signature acknowledging receipt.

3. The offender shall then have the normal 30 calendar day deadline from the date the incident occurred or seven calendar days from the date he receives the rejection (whichever is longer) to submit his request through regular channels beginning with step one.

#### K. ARPs Related to Lost Property Claims

1. Under no circumstances may an offender be compensated for unsubstantiated loss, or for a loss which results from the offender's own acts or for any loss resulting from bartering, trading, selling to, or gambling with other offenders. If the loss of personal property occurs through the negligence of the institution and/or its employees, the offender's claim may be processed as described below.

2. If a state-issue item is available, the offender will be offered such as replacement for the lost personal property. If a state-issue replacement is not available, the warden or his designee will determine a reasonable value for the lost personal property. The maximum liability is \$50. Regardless of whether the ARP results in a monetary or non-monetary replacement, the Lost Property Agreement form (see Subsection O) will be completed and submitted to the offender for his signature. ARPs (with Lost Property Agreement forms attached) resulting in monetary settlements will be forwarded to the Assistant Secretary/OYD for review and processing. These ARPs must include a cover letter advising that the ARP is for settling a lost property claim.

3. The ARP will be processed in accordance with the established timeframes and guidelines except that the response will not be delayed pending the processing of the monetary award by the Assistant Secretary/OYD.

#### L. Miscellaneous

1. Records. Administrative remedy procedure records are confidential and release of these records is governed by R.S. 15:574.12 and Ch.C. Art. 412. Records shall be kept at least three years following final disposition of the request. The Assistant Secretary/OYD shall formulate a procedure for orderly disposal of these records. The following records must be maintained. The institution may retain other records as deemed appropriate.

a. A database (on computer) will be maintained by the ARP Coordinator which will document the nature of each request, all relevant dates, recommendations and dispositions of Steps One and Two.

b. Each institution will submit reports on ARP activity in accordance with Department Regulation No. C-05-001-J.

c. Individual ARPs and dispositions, and all responses and pertinent documents shall be kept on file at the ARP Coordinator's office.

2. Transferred Offenders. When an offender has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution will complete the processing through step one. The warden of the receiving institution will assist in communication with the offender.

3. Discharged Offenders. If an offender is discharged before the review of an ARP, or if he files an ARP after discharge, the institution will complete the processing and will notify the offender at his last known address. (The 30 calendar day timeframe in which to file an ARP applies regardless of whether the offender has been discharged from secure care.)

4. Monetary Damages. Based upon credible facts within an ARP, the Assistant Secretary/OYD may find cause to believe that monetary damages are a fair and just remedy. The Assistant Secretary/OYD shall consult with the Secretary and the Legal Section of the Department to determine if monetary damages are appropriate. Upon finding that monetary damages should be awarded, a dollar amount of the monetary damages to be awarded must be determined. This matter shall be referred to the Office of Risk Management (ORM) of the Division of Administration. If a settlement is reached, a copy of the signed release shall be given/faxed to the appropriate institution.

5. Annual Review. The warden shall annually solicit comments and suggestions from offenders and staff regarding the handling of requests, the efficiency and the credibility of the administrative remedy procedure and report the results of such review to the Assistant Secretary/OYD and the Director of YPCD.

M. Effective Date. Only ARP requests filed on or after the effective date of this Regulation, as adopted pursuant to the Administrative Procedures Act, shall be governed by this procedure and all ARP requests filed prior to the effective date will be administered in accordance with the provisions of LAC 22:I.324, formerly LAC 22:I.325, Administrative Remedy Procedure. All juvenile lost property claims filed prior to the effective date of this rule will be administered in accordance with LAC 22:I.389. All juveniles lost property claims filed after the effective date of this rule shall be governed by this procedure only.

N. Juvenile ARP Form

DPS&C - CORRECTIONS SERVICES Number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
JUVENILE ARP FORM Date Received: \_\_\_\_\_

Name: \_\_\_\_\_ JIRMS Number: \_\_\_\_\_  
Institution: \_\_\_\_\_ Housing Unit: \_\_\_\_\_

"THIS IS A REQUEST FOR ARP"

(You may ask your case manager or other staff members for help completing this form.)  
State your problem (WHO, WHAT, WHEN, WHERE AND HOW) and the remedy requested (what you want to solve the problem):

Problem: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Remedy requested: \_\_\_\_\_  
Date of Incident: \_\_\_\_\_ Today's Date: \_\_\_\_\_

This form must be completed within 30 calendar days of the date of the incident and given to the ARP Coordinator or placed in the ARP/grievance box.

Step One ARP Coordinator's Review and Warden's Response

(Maximum Time For Processing: 21 calendar days)

\_\_\_\_\_ Denied \_\_\_\_\_ Rejected \_\_\_\_\_ Returned \_\_\_\_\_ Accepted Date: \_\_\_\_\_

Reason: \_\_\_\_\_

\_\_\_\_\_ Handled Informally By \_\_\_\_\_

AC's Recommendation: \_\_\_\_\_

Sent to Warden on: \_\_\_\_\_ AC's Signature: \_\_\_\_\_

Warden's response to your ARP Step One request: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_ Warden's Signature: \_\_\_\_\_

If you are not satisfied with this response, you may go to Step Two. The ARP Coordinator must submit your request to the Secretary within 10 calendar days after you receive the Step One response.

Received Step One on: \_\_\_\_\_ Juvenile's Signature: \_\_\_\_\_

Request Step Two: \_\_\_yes \_\_\_no Reason for Step Two request: \_\_\_\_\_

\_\_\_\_\_

Date Step Two request received by AC: \_\_\_\_\_ Date Sent to Secretary: \_\_\_\_\_

AC's Signature: \_\_\_\_\_

Step Two - Secretary's Response

(Maximum Time For Processing: 21 calendar days)

Date Received: \_\_\_\_\_

Secretary's response to ARP Step Two request: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_ Secretary's Signature \_\_\_\_\_

Date received Secretary's response: \_\_\_\_\_

Juvenile's Signature \_\_\_\_\_

If you are not satisfied with this response, you may seek judicial review. A request for judicial review must be submitted to the court within 30 calendar days after receiving the Step Two decision.

O. Lost Property Agreement

Rev. 01-01-02

LOST PROPERTY AGREEMENT

I, \_\_\_\_\_ (Offender name), JIRMS # \_\_\_\_\_, filed an ARP for \_\_\_\_\_ (description of lost property.) My ARP was filed on \_\_\_\_\_. I have received \_\_\_\_\_ as a settlement for my lost property. Since I have received a settlement for my lost property, the State of Louisiana (Department of Public Safety and Corrections [DPS&C]) does not owe me anything for my property which was reported lost on \_\_\_\_\_ (Date ARP filed.) I agree to release the State of Louisiana (DPS&C) and any of its agents, representatives, officers and employees from any liability for compensation, damages and any other amounts that may be owed to me because my property was lost. I also agree to discharge the State of Louisiana of any liability that may exist. I agree to all the terms of this agreement.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
(Signature of Offender)

\_\_\_\_\_  
(Date)

Warden's Approval \_\_\_\_\_

Secretary's Approval \_\_\_\_\_

(Necessary for monetary settlement)

AUTHORITY NOTE: Promulgated in accordance with R.S. 1171, et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 28:861 (April 2002).

Richard Stalder  
Secretary

0204#076

**RULE**

**Department of Revenue  
Policy Services Division**

**Certain Imported Cigarettes  
(LAC 61:I.5101)**

The Department of Revenue, in accordance with the provisions of R.S. 13:5062(10), R.S. 47:1511, and the Administrative Procedure Act, R.S. 49:951 et seq., has adopted this rule. The rule is needed to establish procedures for obtaining information for the enforcement of the conditions of the Master Settlement Agreement.

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

**Title 61**

**DEPARTMENT OF REVENUE**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 51. Tobacco Tax**

**§5101. Reporting of Certain Imported Cigarettes;  
Penalty**

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

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

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

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

D. When it is determined that a registered wholesale tobacco dealer is not in compliance with this rule, the secretary shall give that wholesale dealer written notice by registered mail of the noncompliance and request compliance within 15 days. Upon a second instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Legal Affairs, Policy Services Division, LR 28:866 (April 2002).

Cynthia Bridges  
Secretary

0204#019

**RULE**

**Department of Revenue  
Policy Services Division**

**Electronic Funds Transfer  
(LAC 61:I.4910)**

Under the authority of R.S. 47:1511 and 1519 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue has amended LAC 61:I.4910 pertaining to the electronic transfer of funds in payment of various taxes due the state of Louisiana.

These amendments reflect procedural changes in the processing of taxpayers who are required to make electronic transfer of funds in payment of taxes, fees, and other amounts due to be paid to the Department of Revenue. The Department is updating the rule for these changes and to further clarify the requirements associated with electronic funds transfers.

**Title 61**

**DEPARTMENT OF REVENUE**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 49. Tax Collection**

**§4910. Electronic Funds Transfer**

**A. Electronic Funds Transfer Requirements**

1. Taxpayers are required to remit their respective tax or taxes electronically or by other immediately investible funds as described in R.S. 47:1519 if any of the following criteria are met:

- a. the payments made in connection with the filing of any business tax return or report averaged, during the prior 12-month period, \$20,000 or more per reporting period; or

b. any business tax return or report is filed more frequently than monthly and the average total payments during the prior 12-month period exceed \$20,000 per month; or

c. any company who files withholding tax returns and payments on behalf of other taxpayers and payments during the previous 12-month period averaged \$20,000 or more per month for all tax returns filed.

2. Any taxpayer whose tax payments for a particular tax averages less than \$20,000 per payment may voluntarily remit amounts due by electronic funds transfer with the approval of the secretary. After requesting to electronically transfer tax payments, the taxpayer must continue to do so for a period of at least 12 months.

B. Definitions. For the purposes of this Section, the following terms are defined.

*Automated Clearinghouse Credit*—an automated clearinghouse transaction in which taxpayers through their own banks, originate an entry crediting the state's bank account and debiting their own bank account. Banking costs incurred for the automated clearinghouse credit transaction shall be paid by the person originating the credit.

*Automated Clearinghouse Debit*—an automated clearinghouse transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the taxpayer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

*Business Tax*—any tax, except for individual income tax, collected by the Department of Revenue.

*Electronic Funds Transfer*—any transfer of funds other than a transaction originated by check, draft, or similar paper instrument, that is initiated electronically so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfer shall be accomplished by an automated clearinghouse debit or automated clearinghouse credit. Federal Reserve Wire Transfers (FedWire) may be used only in emergency situations and with prior approval from the department.

*FedWire Transfer*—any transaction originated by taxpayers utilizing the national electronic payment system to transfer funds through the Federal Reserve banks, when the taxpayers debit their own bank accounts and credit the state's bank account. Electronic funds transfers may be made by FedWire only if payment cannot, for good cause, be made by automated clearinghouse debit or credit and the use of FedWire has the prior approval of the department. Banking costs incurred for the FedWire transaction shall be paid by the person originating the transaction.

*Other Immediately Investible Funds*—cash, money orders, bank draft, certified check, teller's check, and cashier's checks.

*Payment*—any amount paid to the Department of Revenue representing a tax, fee, interest, penalty, or other amount.

C. Taxes Required to be Electronically Transferred. Tax payments required to be electronically transferred may include corporation income and franchise taxes including declaration payments; income tax withholding; sales and use taxes; severance taxes; excise taxes; and any other tax or fee

administered or collected by the Department of Revenue. A separate transfer shall be made for each return.

#### D. Taxpayer Notification

1. Those taxpayers required to electronically transfer tax payments will be notified in writing by the department of the electronic funds transfer data format and procedures at least 90 days prior to the required electronic funds transfer effective date. The taxpayer will be given payment method options (ACH debit, ACH credit, or other immediately investible funds) from which to select. Depending on the method selected, the taxpayer will be required to submit specific information needed to process electronic payments. Before using ACH debit, the taxpayer must register at least 60 days in advance. Once required to remit taxes by electronic funds transfer, the taxpayer must continue to do so until notified otherwise by the department.

2. After one year, taxpayers whose average payments have decreased below the threshold may request to be relieved of the electronic funds transfer requirement.

3. Taxpayers experiencing a change in business operations that results in the average payments not meeting the requirements, may request to be relieved of the electronic funds transfer requirement. "Change in business operations" shall include changing of pay services for the purpose of filing income tax withholding.

#### E. Failure to Timely Transfer Electronically

1. Remittances transmitted electronically are considered paid on the date that the remittance is added to the state's bank account. Failure to make payment or remittance in immediately available funds in a timely manner, or failure to provide such evidence of payment or remittance in a timely manner, shall subject the affected taxpayer or obligee to penalty, interest, and loss of applicable discount, as provided by state law for delinquent or deficient tax, fee or obligation payments. If payment is timely made in other than immediately available funds, penalty, interest, and loss of applicable discount shall be added to the amount due from the due date of the tax, fee or obligation payment to the date that funds from the tax, fee, or obligation payment subsequently becomes available to the state.

2. When the statutory filing deadline, without regard to extensions, falls on a Saturday, Sunday, or Federal Reserve holiday, the payments must be electronically transferred in order to be received by the next business day. Transfer must be initiated no later than the last business day prior to the filing deadline. Deadlines for initiating the transfer for ACH credits are determined by the taxpayer's financial institution. Deadlines for ACH debits are established by the payment processor and specified in instructions provided by the department.

3. If a taxpayer has made a good faith attempt and exercises due diligence in initiating a payment under the provisions of R.S. 47:1519 and this rule, but because of unexpected problems arising at financial institutions, Federal Reserve facilities, the automated clearinghouse system, or state agencies, the payment is not timely received, the delinquent penalty may be waived as provided by R.S. 47:1603. Before a waiver will be considered, taxpayers must furnish the department with documentation proving that due diligence was exercised and that the delay was clearly beyond their control.

4. Except for the withholding tax return, Form L-1, the filing of a tax return or report is to be made separately from the electronic transmission of the remittance. Failure to timely file a tax return or report shall subject the affected taxpayer or obligee to penalty, interest, and loss of applicable discount, as provided by state law.

5. In situations involving extenuating circumstances as set forth in writing by the taxpayer and deemed reasonable by the secretary of the Department of Revenue, the secretary may grant an exception to the requirement to transmit funds electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 19:1032 (August 1993), repromulgated LR 19:1340 (October 1993), amended LR 20:672 (June 1994), LR 23:448 (April 1997), LR 28:866 (April 2002).

Cynthia Bridges  
Secretary

0204#020

## RULE

### Department of Revenue Policy Services Division

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

Under the authority of R.S. 47:201.1 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has adopted LAC 61:I.1401 relative to composite returns and composite payments of tax made by a partnership or limited liability company on behalf of nonresident partners or members.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 14. Income: Partnerships

#### §1401. Partnership Composite Return Requirement, Composite Payment Requirement, Exceptions

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

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

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

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

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

**Partner** Ca member or partner of an association that is treated as a partnership for state income tax purposes, including but not limited to, a member in a limited liability company or a partner in a general partnership, a partnership in commendam, or a registered limited liability partnership. A partner is the ultimate owner of a partnership interest;

therefore someone holding or managing a partnership interest on behalf of another, such as a broker, is not a partner for purposes of this rule.

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

#### B. Persons to be Included in a Composite Return

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

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

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

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

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

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

#### C. Composite Return Requirements

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

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

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

- the name of the partner;
- the address of the partner;
- the taxpayer identification number of the partner;
- the partner's distributive share; and
- whether or not that partner has an agreement on file with the Department of Revenue to file an individual return on his or her own behalf.

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

- the name of the partner;
- the address of the partner;
- the taxpayer identification number of the partner;



d. the partner's distributive share.

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

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

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

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

#### D. Composite Payment Requirement

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

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

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

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

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

6. If a partner has any Louisiana source income in addition to the income from the partnership, amounts paid by the partnership on that partner's behalf will be treated as

an advance payment of the tax liability shown on that partner's individually filed return.

#### E. Nonresident Partner's Agreement to File an Individual Return

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

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

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

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

- a. a statement that the taxpayer is a nonresident partner or member;
- b. the partner's name;
- c. the partner's address;
- d. the partner's social security number or taxpayer identification number;
- e. the name of the partnership;
- f. the address of the partnership;
- g. the partnership's federal taxpayer identification number;
- h. a statement that the taxpayer agrees to timely file a Louisiana individual income tax return and make payment of Louisiana individual income tax;
- i. a statement that the taxpayer understands that the Louisiana Department of Revenue is not bound by the agreement if the taxpayer fails to abide by the terms of the agreement;
- j. the statement that "under penalties of perjury, I declare that I have examined this affidavit and agreement and to the best of my knowledge, and belief, it is true correct and complete;" and
- k. the signature of the partner.

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

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

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

b. The Department of Revenue may revoke the agreement only if the partner fails to comply with the terms of the agreement. This revocation is prospective only with respect to the partnership, and does not become effective

until the first partnership tax year following the partnership tax year in which the revocation is transmitted to the partnership. The Department of Revenue must send written notice of the revocation to the partner and the partnership. The notice will be mailed to the partnership at the address given in the last return or report filed by the partnership. The notice will be mailed to the partner at the address provided in the agreement. If the Department of Revenue revokes an agreement, the department may refuse to accept a subsequent agreement by that partner, unless the partner can show that the revocation was in error.

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

1. the identification number that was issued to the partnership by the department under Subparagraph B.6.b above;
2. the amount of the payment made on the partner's behalf;
3. a statement that the amount paid on the partner's behalf can be used as an advance payment of that partner's Louisiana individual income tax liability for the same tax period;
4. the mailing address of the Louisiana Department of Revenue; and
5. the world wide web address of the Louisiana Department of Revenue, [www.rev.state.la.us](http://www.rev.state.la.us).

G Additional Provisions for Publicly Traded Partnerships

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

- a. not to accept agreements filed by partners under the provisions of Paragraph B.4 or Subsection E above; and
- b. to include all partners in its composite return and composite payment required by this section, including corporations and tax-exempt trusts.

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:868 (April 2002).

Cynthia Bridges  
Secretary

0204#067

## RULE

### Department of Social Services Office of Family Support

TANF Initiatives (LAC 67:III.5507, 5511, 5541, and 5547)

The Department of Social Services, Office of Family Support, has adopted LAC 67:III, Subpart 15, §§5507, 5511, 5541, and 5547.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Office of Family Support

#### Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

#### Chapter 55. TANF Initiatives

#### §5507. Adult Education, Basic Skills Training, Job Skills Training, and Retention Services Program

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Workforce Commission to provide adult education, basic skills training, jobs skills training, and retention services to low income families. Employed participants will be provided child care and transportation services. Unemployed participants will be provided short-term child care and transportation services.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by providing education, training, and employment-related services to low income families in order to promote job preparation, work, and marriage.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), Free or Reduced School Lunch, or who has earned income at or below 200 percent of the federal poverty level. Within the needy family, only the parent or caretaker relative is eligible to participate. A needy family also includes a non-custodial parent who has earned income at or below 200 percent of the federal poverty level. Families who lose FITAP eligibility because of earned income are considered needy for a period of one year following the loss of cash assistance.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:870 (April 2002).

**§5511. Micro-Enterprise Development**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Office of Women's Services to provide assistance to low-income families who wish to start their own businesses.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage. This goal will be accomplished by providing assistance to low-income families through the development of comprehensive micro-enterprise development opportunities as a strategy for moving parents into self-sufficiency.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), Free or Reduced School Lunch, or who has earned income at or below 200 percent of the federal poverty level. Only the parent or caretaker relative within the needy family is eligible to participate.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002).

**§5541. Court-Appointed Special Advocates**

A. OFS shall enter into a Memorandum of Understanding with the Supreme Court of Louisiana to provide services to needy children identified as abused or neglected who are at risk of being placed in foster care or, are already in foster care. Community advocates provide information gathering and reporting, determination of and advocacy for the children's best interests, and case monitoring to provide for the safe and stable maintenance of the children or return to their own home.

B. The services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in the home of relatives by ensuring that the time children spend in foster care is minimized.

C. Eligibility for services is limited to needy families, that is, one in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP) benefits, Supplemental Security Income (SSI), Free or Reduced School Lunch, or who has earned income at or below 200 percent of the federal poverty level.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002).

**§5547. Housing Services**

A. The Department of Social Services, Office of Family Support, may enter into Memoranda of Understanding or contracts to create pilot programs that provide transitional, short-term, or one-time housing services to needy families with minor children who participate in self-sufficiency activities, who are at risk of losing existing housing arrangements, who are in an emergency situation, or who face ineligibility because of increased earnings. These services can include but are not limited to: relocation assistance; costs associated with moving or relocation; down payment of deposit and/or initial month's rent; short-term continuation of a housing voucher; down payment for the purchase of a house; housing counseling and homebuyer education for prospective homeowners; or other transitional services determined in conjunction with the Department of Social Services and the Division of Administration.

B. These services meet the TANF goal to provide assistance to needy families so that children can be cared for in their own homes or the homes of relatives and the TANF goal to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.

C. Eligibility for services is limited to parents, legal guardians, or caretaker relatives of minor children who are members of a needy family. A needy family is one in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaChip) benefits, Supplemental Security Income (SSI), Free or Reduced Lunch, Housing and Urban Development (HUD)-funded services, or who has earned income at or below 200 percent of the federal poverty level.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002).

Gwendolyn P. Hamilton  
Secretary

0204#068

**RULE**

**Department of Transportation and Development  
Office of Highways/Engineering**

Control of Outdoor Advertising  
(LAC 70:I.127 and 134)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Department of Transportation and Development has amended a Rule entitled "Regulations for Control of Outdoor Advertising," in accordance with R.S. 48:461, et seq.

**Title 70**  
**TRANSPORTATION**

**Part I. Office of the General Counsel**

**Chapter 1. Outdoor Advertisement**

**Subchapter C. Regulations for Control of Outdoor Advertising**

**§127. Definitions**

**Centerline of Highway**—A line equidistant from the edges of the median separating the main-traveled ways of a divided Interstate Highway, or the centerline of the main-traveled way of a non-divided Interstate Highway or the centerline of each of the main-traveled ways of a divided highway separated by more than the normal median width or constructed on independent alignment.

**Controlled Areas**—Within urban areas, the applicable control area distance is 660 feet measured horizontally from the edges of the right-of-way along a line perpendicular to the centerline of the Interstate and/or Federal Aid Primary Systems. Outside urban areas, the control area extends beyond 660 feet to include any sign within visibility of the Interstate and/or Federal Aid Primary System.

**Erect**—to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

**Illegal Sign**—One which was erected and/or maintained in violation of State law or local law or ordinance.

**Inventory of 1966**—the record of the survey of outdoor advertising signs in existence along Interstate and Federal-Aid Primary Highways as of the date of the inventory compiled by the State Highway Department (now Department of Transportation and Development) pursuant to FHWA Instructional Memorandum No. 50-1-66 dated January 7, 1966.

**Lease**—Can agreement, license, permit or easement, oral or in writing, by which permission or use of land or interest therein is given for a special purpose and which is a valid contract under the laws of Louisiana.

**Main-Traveled Way**—the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposing directions is a main-traveled way. The main-traveled way does not include such facilities as frontage roads, turning roadways, or parking areas.

**Maintenance**—means to allow to exist. The dimensions of the existing sign are not to be altered, nor shall any additions be made to it except for a change in message content. When the cost to maintain exceeds 1/3 of the "as new" replacement cost of the sign, it shall be considered new construction and shall be subject to all requirements pertaining to new construction.

**Safety Rest Area**—Can area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.

**Sign**—any outdoor sign, light, display, figure, painting, drawing, message, placard, poster, billboard or other device which is designed, intended or used to advertise or inform, and any part of the advertising or informative content which is visible from any place on the main-traveled way of the Interstate or Federal Aid Primary Highway System, whether the same be a permanent or portable installation.

**Traveled Way**—the portion of a roadway designed for the movement of vehicles, exclusive of shoulders.

**Turning Roadway**—A connecting roadway for traffic turning between two intersecting portions of an interchange.

**Unzoned**—for purposes of R.S. 48:461 et seq., that no land-use zoning is in effect. The term does not include any land area which has a rural zoning classification, or which has land uses established by zoning variance, nonconforming rights recognition or special exception.

**Urban Area**—Can urbanized area or an urban place as designated by the Bureau of Census having a population of five thousand or more and not within any urbanized area, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the United States Secretary of Transportation. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of Census.

**Visible**—for purposes of R.S. 48:461 et seq., capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.

**Zoned Commercial or Industrial Areas**—those areas which are zoned for business, industry, commerce or trade pursuant to a state or local zoning ordinance or regulation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 48:461, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Office of Highways, LR 2:187 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:871 (April 2002).

**§134. Spacing of Signs**

A. Interstate, Federal-Aid Primary Highways and National Highway System signs may not be located in such a manner as to obscure or otherwise physically interfere with the effectiveness of an official traffic sign, signal or device, or obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic.

B. Non-Interstate Freeways on the Federal-Aid Primary System and National Highway System (Control of Access Routes)

1. No two structures shall be spaced less than 500 feet apart.

2. Outside of incorporated villages, towns and cities, no structure may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety rest area.

C. Non-Freeway Federal-Aid Primary Highways or National Highway System

1. Outside of incorporated villages, towns and cities, no two structures shall be spaced less than 300 feet apart.

2. Within incorporated villages, towns and cities, no two structures shall be spaced less than 100 feet apart.

D. The above provisions applying to the spacing between structures do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the highway at any one time. This exception does not apply to vegetation.

E. Official and "on-premise" signs, as defined in §139, and structures that are not lawfully maintained shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:872 (April 2002).

Kam K. Movassaghi, P.E., Ph.D.  
Secretary

0204#078

## RULE

### Department of Transportation and Development Office of Highways/Engineering

#### Placing of Major Shopping Area Guide Signs on Interstate Highways (LAC 70:III.Chapter 4)

In accordance with the applicable provisions of the Administrative Procedures Act, R.S. 49:950, et seq., notice is hereby given that the Department of Transportation and Development has adopted a Rule entitled "Placing of Major Shopping Area Guide Signs on Interstate Highways," in accordance with R.S. 48:274.3.

#### Title 70

#### TRANSPORTATION

#### Part III. Highways/Engineering

#### Chapter 4. Placing of Major Shopping Area Guide Signs on Interstate Highways

#### §401. Definitions

*Eligible Urban Highway* Can interstate highway.

*Gross Building Area* Csquare footage of usable area within a building, or series of buildings under one roof, that is considered usable by the retail businesses and the public; if a building is multi-level, this includes the square footage available on each level.

*Major Shopping Area* Ca geographic area that:

1. consists of 30 acres or more of land;
2. includes an enclosed retail shopping mall that contains 500,000 square feet or more of gross building area;
3. includes strip-style outdoor shopping plazas and outlet shopping centers that contain no less than 240,000 square feet of gross leasable space;
4. is located within three miles of an interchange with an eligible urban highway.

*Major Shopping Area Guide Sign* Ca rectangular sign panel imprinted with the name of the retail shopping area as it is commonly known to the public and containing directional information.

*Major Shopping Area Ramp Sign* Ca sign with the common name of the retail shopping mall, directional arrows, and/or distances placed near an eligible urban highway exit ramp.

*Retail Shopping Mall* Cretail businesses located within a building, or a series of buildings, connected by a common continuous roof and walls, and enclosing and covering all inner pedestrian walkways and common areas.

*Supplemental Guide Sign* Cthe major shopping area guide signs shall meet the applicable provisions of the Engineering Directives and Standards Memorandum for Interstate Supplemental Guide Signs Section and Manual on Uniform Traffic Control Devices. Only one supplemental guide sign

assembly with a maximum of two supplemental guide sign destinations shall be allowed per exit. Other existing and new traffic generators which qualify for supplemental guide signs shall be given priority over major shopping area guide signs, including permitted and installed shopping area guide signs.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:274.3.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:873 (April 2002).

#### §403. Specifications for Major Shopping Area Mainline Guide Signs

A. A major shopping area sign shall:

1. have a green background with a white retroreflective legend and border;
2. meet the applicable provisions of the Engineering Directives and Standards Memorandum for Interstate Supplemental Guide Signs and the Manual on Uniform Traffic Control Devices;
3. have background, legend, and border material which conforms with department specifications for reflective sheeting;
4. not be illuminated externally or internally; and
5. be fabricated, erected and maintained in conformance with department specifications and fabrications details.

B. A major shopping area guide sign shall:

1. contain the name of the major shopping area as it is commonly known to the public;
2. be a maximum of 20 characters in length; and
3. contain the exit number or, if exit numbers are not applicable, other directional information.

C. Subject to approval of the department, a major shopping area guide sign shall be installed or placed:

1. independently mounted, or if approved by the department, attached to existing guide signs;
2. to take advantage of natural terrain;
3. to have the least impact on the scenic environment;
4. to avoid visual conflict with other signs within the highway right-of-way;
5. with a lateral offset equal to or greater than existing guide signs;
6. for both directions of travel on the eligible urban highway;
7. without blocking motorists' visibility of existing traffic control and guide signs; and
8. in locations that are not overhead unless approved by the department.

D. The department reserves the right to terminate permits and cover or remove any or all shopping center guide signs under the following conditions:

1. failure of a business to meet the minimum criteria;
2. failure to pay renewal fees within 30 days of invoice;
3. during roadway construction and maintenance projects; or
4. the department determines that new or existing traffic generators have a higher priority.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:274.3.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:873 (April 2002).

**§405. Major Shopping Area Ramp Signs.**

A. A major shopping area ramp sign shall:

1. have a green background with a white reflective legend and border;
2. meet the applicable provisions of the Engineering Directives and Standards Memorandum for Interstate Supplemental Guide Signs and the Manual on Uniform Traffic Control Devices;
3. have background, legend, and border material which conforms with department specifications for reflective sheeting;
4. be fabricated, erected, and maintained in conformance with department specifications and fabrication details; and
5. not be illuminated internally or externally.

B. A major shopping area ramp sign shall contain:

1. the name of the major shopping area as it is commonly known to the public; and
2. directional arrows and distances.

C. Subject to approval of the department, the major shopping area ramp sign(s) may be placed along an exit ramp or at an intersection of an access road and crossroad if the retail shopping mall driveway access, buildings, or parking areas are not visible from the exit ramp, access road, or intersection.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:274.3.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:874 (April 2002).

**§407. Application**

A. Applications for Major Shopping Area Guide Signs shall be made utilizing the department's "Major Shopping Area Guide Sign Permit" form and shall be submitted to the Department of Transportation and Development, Traffic Services and Engineering Section, 7686 Tom Drive, Baton Rouge, LA 70806.

B. Applications will be accepted on a "first come, first served" basis. The department will notify the public 30 days in advance of the date, time and location of acceptance of applications by publication of a notice in the newspapers statewide which are designated as "official journals."

C. All permitted major shopping area guide signs shall be fabricated and installed according to departmental standards by a private contractor employed by the permit applicant and shall be installed at locations pursuant to departmental approval and according to a Traffic Control Device Permit issued by the department. The cost of design, fabrication, and installation shall be the responsibility of the permit applicant.

D. An annual fee of \$3,600 per interchange shall be payable to the department prior to installation or renewal. The interchange fee includes \$1,200 for each mainline sign and \$600 for each ramp or trailblazer sign. This fee represents the department's cost to administer the program. A portion of the fee is also associated with maintenance of the highway right-of-way being utilized, as well as the cost associated with anticipated maintenance of the shopping center guide sign.

E. Upon completion of installation, all major shopping area guide signs and mountings become the property of the department and shall then be maintained by the department.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:274.3.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:874 (April 2002).

**§409. Department Contracts**

A. The department may enter into a contract or contracts for the administration, installation, maintenance, accounting and marketing of the shopping center guide sign program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:274.3.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:874 (April 2002).

Kam K. Movassaghi, P.E., Ph.D.  
Secretary

0204#077

**RULE**

**Office of Transportation and Development  
Office of the Secretary  
Crescent City Connection Division**

Bridge Tolls CFree Passage for  
Firemen and Law Enforcement  
(LAC 70:I.505, 507, and 513)

The Department of Transportation and Development, Crescent City Connection Division, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended LAC 70:1.505 to delete obsolete provisions and LAC 70:1.507 and LAC 70:I.513 to provide that the right of free passage for firemen and law enforcement personnel will be utilized using toll tags.

**Title 70**

**TRANSPORTATION**

**Part I. Office of the Secretary**

**Chapter 5. Tolls**

**§505.** Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:25 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Crescent City Connection Division, LR 19:352 (March 1993), repealed LR 28:874 (April 2002).

**§507. Crescent City Connection Exemptions C Firemen**

A. Purpose. All firemen and volunteer fireman shall have free and unhampered passage on and over the Crescent City Connection bridges, the Gretna/Jackson Avenue ferry, the Algiers/Canal Street ferry and the Lower Algiers/Chalmette ferry.

B. Procedure for Firemen

1. Ferry Crossings

a. All firemen as defined in R.S. 39:191.A shall present an identification card containing a photographic picture of the fireman for inspection by the toll collector. The identification card must be issued by the municipality, parish or district as referred to in R.S. 39:191.A.

b. All firemen shall sign a register at the ferry station and provide the name of the agency, municipality, parish or district for which they are employed or engaged.

c. After compliance with §507.B.1.a and b, free unhampered passage will be granted to the fireman.

## 2. Bridge Crossings

a. The right of free passage on and over the Crescent City Connection Bridge at New Orleans for firemen shall be exercised only by means of automatic vehicular identification toll tags.

b. Upon the written request of the chief of a municipal or parish fire department or of a fire prevention district, and upon payment of the required deposit, the Crescent City Connection Division of the Department of Transportation and Development shall issue to such department or district the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

c. A deposit of \$25 shall be charged for the issuance of each tag. The deposit shall be refunded upon the return of the tag to the Crescent City Connection Division.

d. The use of the automatic vehicular identification toll tags provided to a fire department or district shall be limited to bridge crossings made by firemen during the performance of fire fighting and related duties. The appropriate fire department or district shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

## C. Procedure for Volunteer Fireman

1. All volunteer fire organizations shall apply to the Crescent City Connection Division and shall certify to the following:

a. the address of the volunteer fire organization's domicile or headquarters;

b. the general location served by the volunteer fire organization;

c. that the members of the volunteer fire organization are required to travel across the facilities, stated in §507.A pertaining to "purpose," in the performance of official fire fighting or fire prevention services;

d. the number of crossings made in one year, on the facilities stated in §507.A pertaining to "purpose," by volunteer firemen members of the volunteer fire organization.

2. The application must be signed by the chief executive officer of the volunteer fire organization.

## 3. Vehicle Passes

a. Upon approval of an application, the Crescent City Connection Division shall issue vehicle passes for use by the volunteer firemen members of the volunteer fire organization.

b. The vehicle passes shall be for the exclusive use of volunteer firemen members of the volunteer fire organization, while operating a motor vehicle, and are not transferable.

c. The vehicle passes shall not be used for any other purpose than crossing the bridges or ferries for the performance of official firefighting or fire prevention services by volunteer firemen.

d. Lost, stolen or damaged passes will not be replaced.

4. Loss of Privilege. Any prohibited use of vehicle passes issued to a volunteer fire organization will result in the loss of the privilege to obtain and use passes and/or action provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:1975.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Crescent City Connection Division, LR 19:1594 (December 1993), amended LR 28:874 (April 2002).

## §513. Crescent City Connection Exemptions C Law Enforcement Personnel

A. Free passage across the Crescent City Connection, and the ferries known as Algiers/Canal Street, Gretna/Jackson Avenue, and Lower Algiers/Chalmette shall be granted to all law enforcement personnel who are employed on a full-time basis and have law enforcement agency equipment.

B. Law enforcement agency, for purposes of R.S. 40:1392 and LAC 70:1.513 shall mean any agency of the state or its political subdivisions and the federal government, who are responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state or similar federal laws and who are employed in this state. Officers who serve in a voluntary capacity or as honorary officers are not included.

C. Agencies which meet the above criteria shall include the Louisiana State Police, enforcement division agents of the Louisiana Department of Wildlife and Fisheries, sheriffs' departments of the parishes of this state, municipal police departments, levee board police departments, port police departments, the United States Secret Service, the United States Marshal Service and the Federal Bureau of Investigation exclusively.

D.1. The right of free passage on and over the Crescent City Connection Bridge at New Orleans for the state police and law enforcement personnel shall be exercised only by means of automatic vehicular identification toll tags.

2. Upon the written request of the superintendent of state police or the head of an eligible law enforcement agency and payment of the required deposit, the Crescent City Connection Division for the Department of Transportation and Development shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

3. A deposit of \$25 shall be charged for the issuance of each tag. The deposit shall be refunded upon the return of the tag to the Crescent City Connection Division.

4. The use of the automatic vehicular identification toll tags provided shall be limited to bridge crossings made by state police with state police equipment and by designated law enforcement personnel with law enforcement agency equipment. The appropriate law enforcement agency shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1392 and R.S. 48:26.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Crescent City Connection Division, LR 23:84 (January 1997), amended 28:875 (April 2002).

Alan J. LeVasseur  
Executive Director

0204#025

## RULE

### Department of Transportation and Development Office of the Secretary Crescent City Connection Division

#### Transit Lane Tolls (LAC 70:I.515)

The Crescent City Connection Division of the Department of Transportation and Development, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended LAC 70:I.515 to provide for access to the transit lanes on the Crescent City Connection Bridge No. 2., New Orleans, Louisiana, by eligible vehicles by means of properly mounted toll tags.

#### Title 70

#### TRANSPORTATION

#### Part I. Office of the General Counsel

#### Chapter 5. Tolls

#### §515. Crescent City Connection Transit Lanes

A. Intent. It is the intent of this Rule to efficiently maximize the use of the vehicular traffic lanes of the Crescent City Connection for the increased mobility of individuals and goods across the Mississippi River at New Orleans, to encourage and promote mass transit and transportation such as the use of carpools and other high-occupancy vehicle (HOV) use, while minimizing transportation-related fuel consumption and air pollution, and to provide for one-way reversible traffic flow on the transit lanes of the Crescent City Connection Bridge No. 2, and the establishment of the requirements for vehicles operating on the transit lanes.

##### B. Hours of Operation

1. The transit lanes of the Crescent City Connection Bridge No. 2 will be open for use by eligible vehicles in accordance with the control signals posted by the Crescent City Connection Division through the Crescent City Connection Police.

2. Generally, the transit lanes of the Crescent City Connection Bridge No. 2 will be open for use by eligible vehicles with the traffic proceeding to the Eastbank in the morning and with the traffic proceeding to the Westbank in the afternoon.

3. However, the directional traffic flow of the transit lanes may be reconfigured by the Crescent City Connection Division in its sole discretion at such times and in such directions in order to protect the public safety during emergencies and to accommodate the public interest during special events.

C. Ineligible Vehicles. The objective of the transit lanes is to provide a free flowing facility for mass transit, high occupancy vehicles, and other eligible vehicles. Accordingly, the following vehicles are prohibited from using the transit

lanes during the hours of operation even though they may satisfy the vehicle occupancy requirements:

1. trucks with more than two axles or having a gross weight capacity of one ton or more;
2. vehicles towing trailers;
3. parades;
4. funeral processions;
5. pedestrians;
6. bicycles; and
7. non-motorized vehicles.

D. Eligible Vehicles. The following vehicles are eligible to use the transit lanes during the hours of operation:

1. all public mass transit vehicles, including Regional Transit Authority buses and Jefferson Transit System buses, properly displaying a valid toll tag issued by the Crescent City Connection Division ("Public Mass Transit Vehicles");
2. school buses properly displaying a valid toll tag issued by the Crescent City Connection Division ("School Buses");
3. commercial passenger vehicles manufactured to carry seven or more passengers and properly displaying a valid toll tag issued by the Crescent City Connection Division ("HOV-7");
4. other motor vehicles carrying more than a specified number of persons and properly displaying a valid toll tag issued by the Crescent City Connection Division ("HOV-2");
5. motorcycles properly displaying a valid toll tag issued by the Crescent City Connection Division ("Authorized Motorcycles"); and
6. any vehicle certified as an Inherently Low-Emission Vehicle pursuant to Title 40, Code of Federal Regulations, and labeled in accordance with Section 88.312-93(c) of such Title, and properly displaying a valid toll tag issued by the Crescent City Connection Division ("ILEV").

E. Vehicle Occupancy Requirements. The minimum occupancy requirement for vehicles designated as HOV-2 shall be two or more persons during all hours of operation. The minimum occupancy requirement for vehicles designated as HOV-7 shall continue to be seven or more persons during all hours of operation. There are no minimum occupancy requirement for vehicles designated as Authorized Motorcycles or for vehicles designated as ILEV during all hours of operation.

##### F. Qualifications.

1. Eligible vehicles must be prequalified to use the transit lanes as follows.

a. Public Mass Transit Vehicles. All public mass transit vehicles properly displaying a valid toll tag issued by the Crescent City Connection Division shall continue to be pre-qualified to access the transit lanes toll-free during the hours of operation.

i. Upon the written application of the chief administrative officer of the Regional Transit Authority and/or the Jefferson Transit System, and upon payment of the required deposit, the Crescent City Connection Division shall issue the number of automatic vehicular identification toll tags requested for use in connection with the use of the transit lanes by Public Mass Transit Vehicles.

ii. A refundable deposit of \$25 shall be charged for the issuance of each tag.

iii. Toll tags issued for Public Mass Transit Vehicles shall expire annually and shall be renewed upon



advance application by the chief executive or administrative officer of the Regional Transit Authority and the Jefferson Transit System, as the case may be, attesting to the use of outstanding tags exclusively by Public Mass Transit Vehicles.

iv. It is incumbent upon the chief executive or administrative officer of the Regional Transit Authority and the Jefferson Transit System, as the case may be, to promptly report lost toll tags to the Crescent City Connection Division.

v. The use of the automatic vehicular identification toll tags provided to the Regional Transit Authority and the Jefferson Transit System shall be limited to crossings made by Public Mass Transit Vehicles. The Regional Transit Authority and the Jefferson Transit System, as the case may be, each shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of this regulation.

b. School Buses. All school buses properly displaying a valid toll tag issued by the Crescent City Connection Division shall continue to be authorized to access the transit lanes toll-free during the hours of operation.

i. Upon the written application of an official school system's transportation coordinator and/or bus drivers who privately own their clearly marked school buses, and upon payment of the required deposit, the Crescent City Connection Division shall issue the number of automatic vehicular identification toll tags requested for use in connection with the use of the transit lanes by School Buses. Bus drivers who privately own their clearly marked school buses must attach to their signed application an original letter from the school system they serve certifying that their bus services such school system.

ii. A refundable deposit of \$25 dollars shall be charged for the issuance of each tag.

iii. Toll tags issued for School Buses shall expire annually and shall be renewed upon advance application by the official school system's transportation coordinator or bus drivers who privately own their clearly marked school buses, as the case may be, attesting to the use of outstanding tags exclusively by School Buses.

iv. It is incumbent upon the official school system's transportation coordinator and bus drivers who privately own their clearly marked school buses, as the case may be, to promptly report lost toll tags to the Crescent City Connection Division.

v. The use of the automatic vehicular identification toll tags provided to for School Buses shall be limited to crossings made by School Buses. Official school systems and bus drivers who privately own their clearly marked school buses, as the case may be, each shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of this regulation.

vi. Official school systems for purposes of this regulation are parish public school systems, private schools, and parochial schools operating in Louisiana.

c. HOV-7+. Eligible vehicles meeting the minimum occupancy requirement of seven or more persons and displaying a valid toll tag issued by the Crescent City

Connection Division shall continue to be authorized to access the transit lanes toll-free during the hours of operation.

i. Upon the written application of the owner or operator of a commercial passenger vehicle manufactured to carry seven or more passengers, and upon payment of the required deposit, the Crescent City Connection Division shall issue an automatic vehicular identification toll tag requested for use in connection with the use of the transit lanes by an HOV-7 vehicle.

ii. A refundable deposit of \$25 shall be charged for the issuance of each tag.

iii. Toll tags issued for HOV-7 vehicles shall expire annually and shall be renewed upon advance application of the owner or operator, attesting to the use of outstanding tags exclusively by HOV-7 vehicles.

iv. It is incumbent upon the owner and the operator of HOV-7 vehicles to promptly report lost toll tags to the Crescent City Connection Division.

v. The use of the automatic vehicular identification toll tags provided to for HOV-7 vehicles shall be limited to crossings made by eligible vehicles meeting the minimum occupancy requirements of seven or more persons. Registered owners of HOV-7 vehicles shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of this regulation.

d. HOV-2+. Eligible vehicles meeting the minimum occupancy requirement of two or more persons and displaying a valid toll tag issued by the Crescent City Connection Division.

e. Authorized Motorcycles. Motorcycles displaying a valid toll tag issued by the Crescent City Connection Division.

f. ILEV. Any vehicle certified as an Inherently Low-Emission Vehicle pursuant to Title 40, Code of Federal Regulations, and labeled in accordance with, Section 88.312-93(c) of such title, and properly displaying a valid toll tag issued by the Crescent City Connection Division.

2. Toll tags on Public Mass Transit Vehicles, School Buses, HOV-7 vehicles, HOV-2 vehicles, Authorized Motorcycles, and ILEV's must be conspicuously mounted and displayed in accordance with the instructions of the Crescent City Connection Division at all times while operating on the transit lanes.

G Enforcement. During all hours of operation, the Crescent Connection Police shall supervise and actively control access to the transit lanes, and enforce vehicle eligibility, minimum occupancy requirements and toll tag display.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:25 et seq., and R.S. 48:1101.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, Division of Crescent City Connection LR 23:84 (January 1997), amended LR 28:876 (April 2002).

Alan LeVasseur  
Executive Director

0204#026

# Notices of Intent

## NOTICE OF INTENT

### Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs C Certification of Student Data  
(LAC 28:IV.1903)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

The proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

#### Title 28 EDUCATION

#### Part IV. Student Financial Assistance C Higher Education Scholarship and Grant Programs Chapter 19. Eligibility and Responsibilities of Postsecondary Institutions

#### §1903. Responsibilities of Postsecondary Institutions

##### A. Certification of Student Data

1. Through the summer term of 2002, 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:

- a. admission and full-time undergraduate enrollment; and
- b. eligibility for, or enrollment in, a course of study leading to initial teacher certification; and
- c. enrollment in math or chemistry as a major while pursuing teacher certification; and
- d. graduate or undergraduate enrollment in wildlife forestry or marine science; and
- e. cumulative college grade point average; and
- f. cumulative college credit hours earned;
- g. academic year hours earned.

2. Effective the fall semester of 2002, upon request by LASFAC, and for the purpose of determining an applicant's eligibility for a program award, an institution shall report the following student data:

- a. admission and full-time undergraduate enrollment; and
- b. eligibility for, or enrollment in, a course of study leading to initial teacher certification; and
- c. enrollment in math or chemistry as a major while pursuing teacher certification; and
- d. graduate or undergraduate enrollment in wildlife forestry or marine science; and
- e. semester hours attempted;
- f. semester hours earned;
- g. semester quality points earned; and
- h. resignation from the institution or withdrawal from all courses.

B. - G Y

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

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

Interested persons may submit written comments on the proposed changes until 4:30 p.m., May 20, 2002, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, P.O. Box 91202, Baton Rouge LA 70821-9202.

George Badge Eldredge  
General Counsel

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Scholarship/Grant Programs C Certification of Student Data

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No additional costs are anticipated to result from this rule change which amends the data to be reported by institutions eligible to participate in the Tuition Opportunity Program for Students (TOPS) program.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections is anticipated to result from these rule changes.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The rule change will insure that all postsecondary students are held to the same statutory standards in having their cumulative grade point average calculated based on all courses attempted.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this rule.

George Badge Eldredge  
General Counsel  
0204#043

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Tuition Trust Authority Office of Student Financial Assistance

Student Tuition and Revenue Trust (START Saving)  
Program C Interest Rates (LAC 28:VI.315)

The Louisiana Tuition Trust Authority (LATTA) announces its intention to amend rules of the Student Tuition and Revenue Trust (START Savings) Program (R.S. 17:3091-3099.2). This proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

**Title 28  
EDUCATION**

**Part VI. Student Financial AssistanceC Higher  
Education Savings**

**Chapter 3. Education Savings Account**

**§315. Miscellaneous Provisions**

A. - B.4. ...

5. For the year ending December 31, 2001, the Louisiana Education Tuition and Savings Fund earned an interest rate of 6.33 percent.

6. For the year ending December 31, 2001, the Earnings Enhancements Fund earned an interest rate of 6.38 percent.

C. - Q. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1884 (November 2001), LR 28:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., May 20, 2002, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge  
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Student Tuition and Revenue Trust  
(START Saving) ProgramC Interest Rates**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no implementation costs or savings to state or local governmental units as a result of this change. The Rule adopts interest rates to be applied for the year ending December 31, 2001, on funds in START accounts of record and on earnings enhancements which have been allocated to those accounts.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

No impact on revenue collections to the Office of Student Financial Assistance is anticipated to result from the revision.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

This Rule provides the interest rates to be applied to funds in START accounts and on earnings enhancements allocated to those accounts for the year ending December 31, 2001.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

No impact on competition and employment is anticipated to result from this Rule.

George Badge Eldredge  
General Counsel  
0204#044

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Corrective Action Management Units  
(LAC 33:V.109, 2601, 2602, 2603,  
2605, and 2607)(HW081\*)

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 regulations, LAC 33:V.109, 2601, 2602, 2603, 2605, and 2607 (Log #HW081\*).

This proposed rule is identical to federal regulations found in 67 FR 2962, January 22, 2002, No. 14, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

Corrective Action Management Units (CAMUs) are special units created under the Resource Conservation and Recovery Act (RCRA) to facilitate treatment, storage, and disposal of hazardous wastes managed for implementing cleanup, and to remove the disincentives to cleanup that the application of RCRA to these wastes can sometimes impose. The original CAMU regulations were promulgated on February 16, 1993. The state is proposing to adopt the federal amendments verbatim.

The previous LAC 33:V.2603.Temporary Units (TU) is moved to §2604. Text remains the same. In this proposed rule §2603 is now titled "Corrective Action Management Units (CAMUs)." This proposed rule amends the 1993 CAMU rule in six ways. It establishes a specific definition, distinct from the definition of remediation waste, to govern the types of wastes that are eligible for placement in CAMUs. More detailed minimum design and operating standards are established for CAMUs in which waste will remain after closure, with opportunities for the administrative authority of an authorized state to approve alternate design standards under certain circumstances. Treatment requirements are established for wastes that are placed in CAMUs, including minimum treatment standards, with opportunities to adjust treatment requirements under certain circumstances. More specific information is required for CAMU applications, and there shall be public notice and a reasonable opportunity for public comment before final CAMU determinations are made. New requirements are established for CAMUs that will be used only for treatment and storage. Certain types of existing CAMUs will be "grandfathered" and allowed to continue to operate under the 1993 rule. The proposed rule also amends the regulations for "staging piles" to expressly allow for mixing, blending, and

other similar physical operations intended to prepare wastes for subsequent management or treatment. It also adds a new provision allowing off-site placement of hazardous CAMU-eligible waste in hazardous waste landfills, if the waste is treated to meet CAMU treatment standards (somewhat modified). The basis and rationale for this rule are to mirror the federal regulations and to maintain state and federal equivalency in the RCRA program.

This proposed rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

### Title 33

## ENVIRONMENTAL QUALITY

### Part V. Hazardous Waste and Hazardous Materials

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

#### Chapter 1. General Provisions and Definitions

##### §109. Definitions

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

\* \* \*

*Corrective Action Management Unit (CAMU)* Repealed.

\* \* \*

*Remediation Waste* Call solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup.

\* \* \*

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 by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:

## Chapter 26. Corrective Action Management Units and Special Provisions for Cleanup

### §2601. Applicability of Corrective Action Management Unit (CAMU) Regulations

A. Except as provided in Subsection B of this Section, CAMUs are subject to the requirements of LAC 33:V.2604.

B. CAMUs that were approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the department on or before November 20, 2000, are subject to the requirements in LAC 33:V.2602 for grandfathered CAMUs. CAMU waste, activities, and design shall not be subject to the standards in LAC 33:V.2604, so long as the waste, activities, and design remain within the general scope of the CAMU as approved.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:285 (February 2000), LR 28:

### §2602. Grandfathered Corrective Action Management Units (CAMUs)

A. To implement remedies under LAC 33:V.3322 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to LAC 33:V.3322, the administrative authority may designate an area at the facility as a CAMU under the requirements in this Section. CAMU means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

1. Placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

2. Consolidation or placement of remediation wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

B. The administrative authority may designate a regulated unit (as defined in LAC 33:V.3301.B) as a CAMU, or may incorporate a regulated unit into a CAMU, under the following conditions.

1. The regulated unit is closed or closing, meaning it has begun the closure process under LAC 33:V.3513 or 4383.

2. Inclusion of the regulated unit will enhance implementation of effective, protective, and reliable remedial actions for the facility.

3. The LAC 33:V.Chapters 33, 35, and 37 requirements and the unit-specific requirements of Chapters 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 43 that applied to that regulated unit shall continue to apply to that portion of the CAMU after incorporation into the CAMU.

C The administrative authority shall designate a CAMU in accordance with the following.

1. The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies.

2. Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents.

3. The CAMU shall include uncontaminated areas of the facility only if including such areas for the purpose of managing remediation waste is more protective than management of such wastes at contaminated areas of the facility.

4. Areas within the CAMU where wastes remain in place after closure of the CAMU shall be managed and contained so as to minimize future releases, to the extent practicable.

5. The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable.

6. The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU.

7. The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

D. The owner/operator shall provide sufficient information to enable the administrative authority to designate a CAMU in accordance with the criteria in LAC 33:V.2603.

E. The administrative authority shall specify, in the permit or order, requirements for CAMUs, which include the following.

1. The areal configuration of the CAMU shall be provided.

2. Requirements for remediation waste management shall include the specification of applicable design, operation, and closure requirements.

3. Requirements for groundwater monitoring shall be sufficient to:

a. continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in groundwater from sources located within the CAMU; and

b. detect and subsequently characterize releases of hazardous constituents to groundwater that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU.

4. Closure and post-closure requirements shall include the following:

a. closure of CAMUs, which shall:

i. minimize the need for further maintenance; and  
ii. control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere;

b. requirements for closure of CAMUs that shall include the following, as appropriate and as deemed necessary by the administrative authority, for a given CAMU:

i. requirements for excavation, removal, treatment, or containment of wastes;

ii. for areas in which wastes will remain after closure of the CAMU, requirements for capping of such areas; and

iii. requirements for removal and decontamination of equipment, devices, and structures used in remediation waste management activities within the CAMU;

c. in establishing specific closure requirements for CAMUs under LAC 33:V.2603.E, the administrative authority shall consider the following factors:

i. CAMU characteristics;

ii. volume of wastes that remain in place after closure;

iii. potential for releases from the CAMU;

iv. physical and chemical characteristics of the waste;

v. hydrological and other relevant environmental conditions at the facility that may influence the migration of any potential or actual releases; and

vi. potential for exposure of humans and environmental receptors if releases were to occur from the CAMU; and

d. post-closure requirements, as necessary to protect human health and the environment, including for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed, to ensure the integrity of any cap, final cover, or other containment system.

F. The administrative authority shall document the rationale for designating CAMUs and shall make such documentation available to the public.

G. Incorporation of a CAMU into an existing permit must be approved by the administrative authority according to the procedures for department-initiated permit modifications under LAC 33:V.323 or according to the permit modification procedures of LAC 33:V.321.C.

H. The designation of a CAMU does not change EPA's existing authority to address cleanup levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

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

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

Editor's Note: The previous §2603.Temporary Units (TU) has been changed to §2604. The text remains the same.

### **§2603. Corrective Action Management Units (CAMUs)**

A. To implement remedies under LAC 33:V.3322 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to LAC 33:V.3322, the administrative authority may designate an area at the facility as a CAMU under the requirements in this Section. CAMU means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of

the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

1. Definition. *CAMU-Eligible Waste*—

a. all solid and hazardous wastes and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup. As-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes;

b. wastes that would otherwise meet the description in Subparagraph A.1.a of this Section are not CAMU-eligible wastes when:

i. the wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units found above ground, unless the wastes are first placed in the tanks, containers, or non-land-based units as part of cleanup or the containers or tanks are excavated during the course of cleanup; or

ii. the administrative authority exercises the discretion in Paragraph A.2 of this Section to prohibit the wastes from management in a CAMU; and

c. notwithstanding Subparagraph A.1.a of this Section, when appropriate, as-generated nonhazardous waste may be placed in a CAMU when such waste is being used to facilitate treatment or the performance of the CAMU.

2. The administrative authority may prohibit, where appropriate, the placement of waste in a CAMU when the administrative authority has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of LAC 33.V.Chapter 22, applicable unit design requirements of Chapters 5, 18, 19, 21, 23, 24, 25, 27, 28, 29, 32, and 35, or applicable unit design requirements of Chapter 43 or that noncompliance with other applicable requirements of this Chapter likely contributed to the release of the waste.

3. Prohibition Against Placing Liquids in CAMUs

a. The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except when placement of such wastes facilitates the remedy selected for the waste.

b. The requirements in LAC 33:V.2515.C for placement of containers holding free liquids in landfills apply to placement in a CAMU except when placement facilitates the remedy selected for the waste.

c. The placement of any liquid that is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made in accordance with LAC 33:V.2515.F.

d. The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with LAC 33:V.2515.D. Sorbents used to treat free liquids in CAMUs must meet the requirements of LAC 33:V.2515.F.

4. Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

5. Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

B. The administrative authority may designate a regulated unit (as defined in LAC 33:V.3301.B) as a CAMU or may incorporate a regulated unit into a CAMU under the following conditions.

1. The regulated unit is closed or closing, meaning it has begun the closure process under LAC 33:V.3513 or 4383.

2. Inclusion of the regulated unit will enhance implementation of effective, protective, and reliable remedial actions for the facility.

3. The LAC 33:V.Chapters 33, 35, and 37 requirements and the unit-specific requirements of Chapters 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 43 that applied to the regulated unit shall continue to apply to that portion of the CAMU after incorporation into the CAMU.

C. The administrative authority shall designate a CAMU that will be used for storage and/or treatment only in accordance with Subsection F of this Section. The administrative authority shall designate all other CAMUs in accordance with the following.

1. The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies.

2. Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents.

3. The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU-eligible waste is more protective than management of such wastes at contaminated areas of the facility.

4. Areas within the CAMU where wastes remain in place after closure of the CAMU shall be managed and contained so as to minimize future releases, to the extent practicable.

5. The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable.

6. The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU.

7. The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

D. The owner/operator shall provide sufficient information to enable the administrative authority to designate a CAMU in accordance with the criteria in this Section. This must include, unless not reasonably available, information on:

1. the origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release);

2. whether the waste was listed or identified as hazardous at the time of disposal and/or release; and

3. whether the disposal and/or release of the waste occurred before or after the land disposal requirements of LAC 33:V.Chapter 22 were in effect for the waste listing or characteristic.

E. The administrative authority shall specify, in the permit or order, requirements for CAMUs, which include the following.

1. The areal configuration of the CAMU shall be provided.

2. Except as provided in Subsection G of this Section, requirements for CAMU-eligible waste management shall include the specification of applicable design, operation, treatment, and closure requirements.

3. Minimum Design Requirements. CAMUs, except as provided in Subsection F of this Section, into which wastes are placed must be designed in accordance with the following.

a. Unless the administrative authority approves alternate requirements under Subparagraph E.3.b of this Section, CAMUs that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30 cm depth of leachate over the liner. For purposes of this Section, *composite liner* means a system consisting of two components: the upper component must consist of a minimum 30 mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component.

b. Alternate Requirements. The administrative authority may approve alternate requirements if:

i. the administrative authority finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the groundwater or surface water at least as effectively as the liner and leachate collection systems in Subparagraph E.3.a of this Section; or

ii. the CAMU is to be established in an area with existing significant levels of contamination, and the administrative authority finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.

4. Minimum Treatment Requirements. Unless the wastes will be placed in a CAMU for storage and/or treatment only in accordance with Subsection F of this Section, CAMU-eligible wastes that, absent this Section, would be subject to the treatment requirements of LAC 33:V.Chapter 22 and that the administrative authority determines contain principal hazardous constituents must be treated to the standards specified in Subparagraph E.4.c of this Section.

a. Principal hazardous constituents are those constituents that the administrative authority determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

i. In general, the administrative authority will designate as principal hazardous constituents:

(a). carcinogens that pose a potential direct risk from ingestion or inhalation, at the site, at or above  $10^{-3}$  risk level; and

(b). non-carcinogens that pose a potential direct risk from ingestion or inhalation, at the site, an order of magnitude or greater over their reference dose.

ii. The administrative authority will also designate constituents as principal hazardous constituents, when appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to groundwater are substantially higher than cleanup levels or goals at the site. When making such a designation, the administrative authority may consider such factors as constituent concentrations and fate and transport characteristics under site conditions.

b. In determining which constituents are principal hazardous constituents, the administrative authority must consider all constituents that, absent this Section, would be subject to the treatment requirements in LAC 33:V.Chapter 22.

c. Waste that the administrative authority determines contains principal hazardous constituents must meet treatment standards determined in accordance with Subparagraph E.4.d or e of this Section.

d. Treatment Standards for Wastes Placed in CAMUs

i. For non-metals, treatment must achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by Clause E.4.d.iii of this Section.

ii. For metals, treatment must achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by Clause E.4.d.iii of this Section.

iii. When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in LAC 33:V.Chapter 22, Table 7.

iv. For waste exhibiting the hazardous characteristic of ignitability, corrosivity, or reactivity, the waste must also be treated to eliminate these characteristics.

v. For debris, the debris must be treated in accordance with LAC 33:V.2230 or by methods described in or to levels established under Clauses E.4.d.i-iv or Subparagraph E.4.e of this Section, whichever the administrative authority determines is appropriate.

vi. Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the administrative authority may specify a leaching test other than the TCLP (Method 1311, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110.A.11) to measure treatment effectiveness, provided the administrative authority determines that an alternative leach testing protocol is appropriate for use and that the alternative more accurately reflects conditions at the site that affect leaching.

e. Adjusted Standards. The administrative authority may adjust the treatment level or method in Subparagraph E.4.d of this Section to a higher or lower level, based on one or more of the following factors, as appropriate. The

adjusted level or method must be protective of human health and the environment:

i. the technical impracticability of treatment to the levels or by the methods in Subparagraph E.4.d of this Section;

ii. the levels or methods in Subparagraph E.4.d of this Section would result in concentrations of principal hazardous constituents that are significantly above or below cleanup standards applicable to the site (established either site-specifically or promulgated under state or federal law);

iii. the views of the affected local community on the treatment levels or methods in Subparagraph E.4.d of this Section, as applied at the site, and for treatment levels, the treatment methods necessary to achieve these levels;

iv. the short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in Subparagraph E.4.d of this Section; and

v. the long-term protection offered by the engineering design of the CAMU and related engineering controls:

(a). when the treatment standards in Subparagraph E.4.d of this Section are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility;

(b). when cost-effective treatment has been used and the CAMU meets the RCRA Subtitle C liner and leachate collection requirements for new land disposal units at LAC 33:V.2503.L and M;

(c). when, after review of appropriate treatment technologies, the administrative authority determines that cost-effective treatment is not reasonably available, and the CAMU meets the RCRA Subtitle C liner and leachate collection requirements for new land disposal units at LAC 33:V.2503.L and M;

(d). when cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or

(e). when, after review of appropriate treatment technologies, the administrative authority determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in Subparagraphs E.3.a and b of this Section or the CAMU provides substantially equivalent or greater protection.

f. The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the CAMU.

g. For the purpose of determining whether wastes placed in CAMUs have met site-specific treatment standards, the administrative authority may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

5. Except as provided in Subsection F of this Section, CAMUs shall have requirements for groundwater monitoring and corrective action that are sufficient to:

a. continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in groundwater from sources located within the CAMU;

b. detect and subsequently characterize releases of hazardous constituents to groundwater that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; and

c. provide notification to the administrative authority and corrective action as necessary to protect human health and the environment from releases to groundwater from the CAMU.

6. Except as provided in Subsection F of this Section, CAMUs shall have the following closure and post-closure requirements:

a. closure of CAMUs, which shall:

i. minimize the need for further maintenance; and

ii. control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere;

b. requirements for closure of CAMUs that shall include the following, as appropriate and as deemed necessary by the administrative authority, for a given CAMU:

i. requirements for excavation, removal, treatment, or containment of wastes; and

ii. requirements for removal and decontamination of equipment, devices, and structures used in CAMU-eligible waste management activities within the CAMU;

c. in establishing specific closure requirements for CAMUs under this Subsection, the administrative authority shall consider the following factors:

i. CAMU characteristics;

ii. volume of wastes that remain in place after closure;

iii. potential for releases from the CAMU;

iv. physical and chemical characteristics of the waste;

v. hydrological and other relevant environmental conditions at the facility that may influence the migration of any potential or actual releases; and

vi. potential for exposure of humans and environmental receptors if releases were to occur from the CAMU;

d. cap requirements, as follows:

i. at final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU, with constituent concentrations at or above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the following performance criteria, except as provided in Clause E.6.d.ii of this Section:

(a). provide long-term minimization of migration of liquids through the closed unit;

(b). function with minimum maintenance;

(c). promote drainage and minimize erosion or abrasion of the cover;



(d). accommodate settling and subsidence so that the cover's integrity is maintained; and

(e). have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present; and

ii. the administrative authority may determine that modifications to Clause E.6.d.i of this Section are needed to facilitate treatment or the performance of the CAMU (e.g., to promote biodegradation); and

e. post-closure requirements as necessary to protect human health and the environment and to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed, to ensure the integrity of any cap, final cover, or other containment system.

F. CAMUs used for storage and/or treatment only are CAMUs in which wastes will not remain after closure. Such CAMUs must be designated in accordance with all of the requirements of this Section, except as follows.

1. CAMUs that are used for storage and/or treatment only and that operate in accordance with the time limits established in the staging pile regulations at LAC 33:V.2605.D.1.c, H, and I are subject to the requirements for staging piles at LAC 33:V.2605.D.1.a and b and 2, E, F, J, and K in lieu of the performance standards and requirements for CAMUs in Subsection C and Paragraphs E.3 - 6 of this Section.

2. CAMUs that are used for storage and/or treatment only and that do not operate in accordance with the time limits established in the staging pile regulations at LAC 33:V.2605.D.1.c, H, and I:

a. must operate in accordance with a time limit, established by the administrative authority, that is no longer than necessary to achieve a timely remedy selected for the waste; and

b. are subject to the requirements for staging piles at LAC 33:V.2605.D.1.a and b and 2, E, F, J, and K in lieu of the performance standards and requirements for CAMUs in Subsection C and Paragraphs E.4 and 6 of this Section.

G. CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at Subparagraph E.3.a of this Section, requirements for caps at Subparagraph E.6.d of this Section, groundwater monitoring requirements at Paragraph E.5 of this Section or, for treatment and/or storage-only CAMUs, the design standards at Subsection F of this Section.

H. The administrative authority shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under Subparagraph E.4.e of this Section to the treatment standards in Subparagraph E.4.d of this Section.

I. Notwithstanding any other provision of this Section, the administrative authority may impose additional requirements as necessary to protect human health and the environment.

J. Incorporation of a CAMU into an existing permit must be approved by the administrative authority according to the procedures for department-initiated permit modifications under LAC 33:V.323 or according to the permit modification procedures of LAC 33:V.321.C.

K. The designation of a CAMU does not change EPA's existing authority to address cleanup levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

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

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

#### **§2605. Staging Piles**

NOTE: This Section is written in a special format to make it easier to understand the regulatory requirements. Like other department and USEPA regulations, this establishes enforceable legal requirements. For this Section, *I* and *you* refer to the owner/operator.

A. What Is a Staging Pile? A staging pile is an accumulation of solid, non-flowing remediation waste (as defined in LAC 33:V.109) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the administrative authority according to the requirements in this Section. For the purposes of this Section, storage includes mixing, sizing, blending, or other similar physical operations as long as they are intended to prepare the wastes for subsequent management or treatment.

B. - M. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:285 (February 2000), amended LR 28:

#### **§2607. Disposal of CAMU-Eligible Wastes in Permitted Hazardous Waste Landfills**

A. The administrative authority with regulatory oversight at the location where the cleanup is taking place may approve placement of CAMU-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of LAC 33:V.Chapter 22, if the conditions in Paragraphs A.1-3 of this Section are met.

1. The waste must meet the definition of CAMU-eligible waste in LAC 33:V.2603.A.1.

2. The administrative authority with regulatory oversight at the location where the cleanup is taking place shall identify principal hazardous constituents in such waste, in accordance with LAC 33:V.2603.E.4.a and b, and require that such principal hazardous constituents are treated to any of the following standards specified for CAMU-eligible wastes:

a. the treatment standards under LAC 33:V.2603.E.4.d;

b. treatment standards adjusted in accordance with LAC 33:V.2603.E.4.e.i, iii, iv, or v.(a); or

c. treatment standards adjusted in accordance with LAC 33:V.2603.E.4.e.v.(b) when treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.

3. The landfill receiving the CAMU-eligible waste must have a RCRA hazardous waste permit, meet the requirements for new landfills in LAC 33:V.Chapter 25, and be authorized to accept CAMU-eligible wastes. For the purposes of this requirement, "permit" does not include interim status.

B. The person seeking approval shall provide sufficient information to enable the administrative authority with regulatory oversight at the location where the cleanup is taking place to approve placement of CAMU-eligible waste in accordance with Subsection A of this Section. Information required by LAC 33:V.2603.D.1-3 for CAMU applications must be provided, unless it is not reasonably available.

C. The administrative authority with regulatory oversight at the location where the cleanup is taking place shall provide public notice and a reasonable opportunity for public comment before approving CAMU-eligible waste for placement in an off-site permitted hazardous waste landfill, consistent with the requirements for CAMU approval at LAC 33:V.2603.H. The approval must be specific to a single remediation.

D. Applicable hazardous waste management requirements in LAC 33:V. Chapters 5, 18, 19, 21, 23, 24, 25, 27, 28, 29, 32, and 35, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this Section, for CAMU-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding LAC 33:V.307.A, a landfill may not receive hazardous CAMU-eligible waste under this Section unless its permit specifically authorizes receipt of such waste.

E. For each remediation, CAMU-eligible waste may not be placed in an off-site landfill authorized to receive CAMU-eligible waste in accordance with Subsection D of this Section until the following additional conditions have been met.

1. The landfill owner/operator shall notify the administrative authority responsible for oversight of the landfill and persons on the facility mailing list, maintained in accordance with LAC 33:V.717.A.5, of his or her intent to receive CAMU-eligible waste in accordance with this Section. The notice must identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.

2. Any comments from persons on the facility mailing list, including objections to the receipt of the CAMU-eligible waste, shall be provided to the administrative authority within 15 days of notification.

3. The administrative authority shall have the opportunity to object to the placement of the CAMU-eligible waste in the landfill for a period of 30 days after notification. The administrative authority may extend the review period an additional 30 days because of public concerns or insufficient information.

4. CAMU-eligible wastes shall not be placed in the landfill until the administrative authority has notified the facility owner/operator that he or she does not object to its placement.

5. If the administrative authority objects to the placement or does not notify the facility owner/operator that he or she has chosen not to object, the facility shall not receive the waste, notwithstanding LAC 33:V.307.A, until the objection has been resolved or the owner/operator obtains a permit modification in accordance with the procedures of LAC 33:V.321.C specifically authorizing receipt of the waste.

6. As part of the permit issuance or permit modification process of Paragraph D of this Section, the administrative authority may modify, reduce, or eliminate the notification requirements of this Subsection as they apply to specific categories of CAMU-eligible waste, based on minimal risk.

F. Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under this Section must comply with the requirements of LAC 33:V.2245.D. Off-site facilities treating CAMU-eligible wastes to comply with this Section must comply with the requirements of LAC 33:V.2247.C, except that the certification must be with respect to the treatment requirements of Paragraph A.2 of this Section.

G. For the purposes of this Section only, the "design of the CAMU" in LAC 33:V.2603.E.4.e.v means design of the permitted RCRA Subtitle C landfill.

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

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

A public hearing will be held on May 28, 2002, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by HW081.\* Such comments must be received no later than May 28, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to patsyd@deq.state.la.us. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of HW081.\*

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-First Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA

71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

0204#033

## NOTICE OF INTENT

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

#### Stage II Vapor Recovery Systems (LAC 33:III.2132)(AQ225)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.2132 (Log #AQ225).

This proposed Rule allows the continued use of the current Stage II vapor recovery systems certified under California Air Resources Board (CARB) certification procedures effective on or before March 31, 2001. Stage II vapor recovery system requirements are applicable to motor vehicle fuel dispensing facilities in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge. Louisiana and other states based their vapor recovery programs on the requirements of CARB. CARB recently approved changes to its standards, which affect the installation and operation of CARB-certified systems in Louisiana and other states. The EPA has recommended that a state not changing its standard to meet CARB's revised standards reference in its regulations that certification is based on CARB certification procedures effective on or before March 31, 2001. This proposed revision complies with that recommendation. This Rule is also being proposed as a revision to the Louisiana State Implementation Plan (SIP) for air quality. The basis and rationale for this Rule are continued compliance with the Clean Air Act requirements for the Baton Rouge area for protection of air quality.

This proposed Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

## Title 33 ENVIRONMENTAL QUALITY

### Part III. Air

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

##### Subchapter F. Gasoline Handling

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

A. Definitions. Terms used in this Section are defined in LAC 33:III.111 of these regulations with the exception of those terms specifically defined as follows:

\* \* \*

*Stage II Vapor Recovery System*—A gasoline vapor recovery system that is CARB-approved on or before March 31, 2001, or equivalent, and recovers vapors during the refueling of motor vehicles.

B. - B.4.d. ...

5. No owner or operator as described in Paragraphs B.1, 2, and 3 of this Section shall cause or allow the dispensing of motor vehicle fuel at any time unless all fuel dispensing operations are equipped with and utilize a Stage II vapor recovery system certified by CARB on or before March 31, 2001, that is properly installed and operated in accordance with the corresponding CARB executive order. The vapor recovery equipment must also be installed and operated within the guidelines of the National Fire Protection Association (NFPA) 30. The vapor recovery equipment utilized shall be certified by CARB or equivalent certification authority approved by the administrative authority\* to attain a minimum of 95 percent gasoline vapor control efficiency. This certified equipment shall have coaxial hoses and shall not contain remote check valves. In addition, only CARB or equivalent approved aftermarket parts and CARB or equivalent approved rebuilt parts shall be used for installation or replacement use.

B.6. - D.1.b.iii. ...

2. The test methods used are contained in the Environmental Protection—Agency document entitled, "Technical Guidance Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, EPA-450-3-91-022b" and the CARB Stationary Source Test Methods, Volume 2, April 12, 1996.

D.3. - H.1. ...

- a. notices of corrected violations;
- b. compliance orders;

H.1.c. - 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), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 28:

A public hearing on the proposed rule and SIP revision will be held on May 28, 2002, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by AQ225. Such comments must be received no later than June 4, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to patsyd@deq.state.la.us. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ225.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-First Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Stage II Vapor Recovery Systems

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no known implementation costs or savings to state or local governmental units.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment. This rule serves only to clarify the requirements and applicability of LAC 33:III.Chapter 21, Subchapter F, Section 2132.

James H. Brent, Ph.D.  
Assistant Secretary  
0204#032

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Division of Administration Office of Information Technology

Information Technology  
(LAC 4:XI.101, 301, 303, 501 and 503)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and in order to comply with the legislative mandate of Act 772 of the 2001 Regular Session of the Louisiana Legislature, the Office of the Governor, Division of Administration, Office of Information Technology (OIT), hereby gives notice of its intent to promulgate Rules and Regulations relative to information technology initiatives.

#### Title 4

#### ADMINISTRATION

#### Part XI. Information Technology

#### Chapter 1. General Provisions

#### §101. General

A. Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 39:15.1-6 in Act 772 of the 2001 Regular Session, the Chief Information Officer (CIO) and the Office of Information Technology (OIT) was established to manage and direct the following information technology initiatives:

1. overseeing and implementing a state master information technology plan;
2. establishing/directing the implementation of IT standards, architecture, and guidelines for hardware and software systems, contractual arrangements, consolidation of services, and system management;
3. reviewing, coordinating, and standardizing IT planning, procurement, and budgeting;
4. implementing strategic IT planning, review, and operation;
5. measuring and assessing the performance of IT systems, including the creation of benchmarks and the establishment of accountability;
6. overseeing/coordinating the centralization of technology, including consolidation, outsourcing, and sharing statewide government IT resources and services;
7. assuring compatibility and connectivity of Louisiana's information systems;
8. facilitating and fostering innovative emerging technologies that provide cost-effective solutions for government operation;
9. reviewing/overseeing IT projects and systems for compliance with statewide strategies, goals, and standards;
10. ensuring that statewide IT applications are not duplicated by individual state agencies in the executive branch;
11. facilitating/fostering the identification of state data policy and planning needs; and
12. charging respective user agencies for the cost of IT services provided by OIT.

AUTHORITY NOTE: Promulgated in accordance with Act 772 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:

### Chapter 3. State Agencies Responsibilities

#### §301. General

A. All agencies under the authority of Act 772 must comply with the policies and guidelines promulgated by the Office of Information Technology.

AUTHORITY NOTE: Promulgated in accordance with Act 772 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:

#### §303. Information Technology Coordination

A. All departments shall designate one representative to serve as the Information Technology Coordinator, unless otherwise approved by the CIO. The Information Technology Coordinator shall be recognized by the Office of Information Technology as the agency's authorized representative for coordinating with OIT.

AUTHORITY NOTE: Promulgated in accordance with Act 772 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:

### Chapter 5. Policy and Guidelines

#### §501. General

A. It is the intent of the Office of Information Technology to develop formal IT policies, standards and guidelines relative to information technology activities including but not limited to the following:

1. implementing of IT standards for hardware, software, and consolidation of services;
2. reviewing and coordinating IT planning, procurement, and budgeting;
3. providing oversight for centralization/consolidation of technology initiatives and the sharing of IT resources;
4. assuring compatibility and connectivity of Louisiana's information systems;
5. providing oversight on IT projects and systems for compliance with statewide strategies, goals, and standards.

B. The policies, standards and guidelines of the Office of Information Technology will be promulgated via Information Technology Bulletins.

AUTHORITY NOTE: Promulgated in accordance with Act 772 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:

#### §503. Policy Distribution

A. The official method of publishing/distributing OIT policies, standards and guidelines will be via the OIT website at: [www.doa.state.la.us/oit](http://www.doa.state.la.us/oit).

B. Other electronic delivery systems will be utilized as appropriate to notify agencies of adopted policies and guidelines.

AUTHORITY NOTE: Promulgated in accordance with Act 772 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:

#### Family Impact Statement

In accordance with Act 1183 of 1999, the Office of the Governor, Division of Administration, Office of Information Technology hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice

of Intent will have no impact on the six criteria set out at R.S. 49:972.B.

The proposed rule for the OIT should not have any known or foreseeable impact on any family as defined by R.S. 49:9720 or on family information, stability, and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of persons regarding education and supervision of their children;
3. the functioning of the family;
4. on family earnings and family budget;
5. the behavior and personal responsibility of children; or
6. the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit comments relative to the proposed Rule to James Howze, Office of Information Technology, P.O. Box 94095, Baton Rouge, LA 70805-9095, prior to May 20, 2002.

Chad McGee

Acting Chief Information Officer

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Information Technology

##### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs to state or local governmental units beyond the initial publication cost which we anticipate to be \$100. There should be no implementation cost in later years. In regards to cost savings, it is the long range goal of the Office of Information Technology to capitalize on economies of scale and provide shared hardware, networking, technical, operational, and facility support from an enterprise level. The centralization and consolidation of these services will create numerous opportunities for eliminating duplication of services, and reducing overall IT cost for the enterprise.

##### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of the proposed Rule should 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)

There are no significant anticipated costs and/or economic benefits to directly affected persons or non-governmental groups. However, to the extent that IT savings can be accomplished by state government, it is presumed that some decrease in private sector revenues may occur. At this time, any such revenue decrease which might occur cannot be quantified, and no particular private entity can be identified as being subject to any loss of revenue.

##### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no significant effect on competition and employment. Furthermore, OIT will comply with all applicable procurement rules/regulations.

Chad McGee  
Acting CIO  
0204#050

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**  
**Office of the Governor**  
**Ground Water Management Commission**

Ground Water Management (LAC 33:IX.Chapters 31-35)

Editor's Note: In accordance with OSR uniform formatting procedure, these rules have been moved from Title 70 to Title 33 for topical placement.

Pursuant to the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., as amended, on May 18, 2001, the Ground Water Management Commission (Commission) approved the subject rule for hearing regarding the designation of Critical Ground Water Areas on March 20, 2002 in accordance with R.S. 38:3099. R.S. 38:3099 states that the commission shall develop and promulgate rules and regulations for the determination of critical ground water areas and possible limitation of access to ground water sources and response to emergency situations. Failure to designate and protect critical ground areas may endanger drinking water, as well as the ability of industry and agriculture to utilize these fresh water aquifers for commercial purposes. R.S. 38:3099 specifically requires that public hearings be held in such matters and the attached rule provide the mechanism to meet that requirement. This proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part IX. Water Quality**

**Subpart 2. Groundwater Management**

**Chapter 31. General Provisions**

**§3101. Applicability**

A. These Rules shall be applicable to hearings relative to the commission's jurisdiction to determine critical groundwater areas, potential critical ground water areas and a ground water emergency. The Rules shall not alter or change the right of the commission to call a hearing for the purpose of taking action with respect to any matter within its jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

**§3103. Definitions**

A. The words defined herein shall have the following meanings when used in these Rules. All other words used and not defined shall have their usual meanings unless specifically defined in Title 38 of the Louisiana Revised Statutes.

*Beneficial Purpose or Beneficial Use* the technologically feasible use of ground water for domestic, municipal, industrial, agricultural, recreational or therapeutic purposes or any other advantageous use.

*Commission* Ground Water Management Commission authorized by R.S. 38:3099.3.A.

*Critical Ground Water Area (CGWA)* Can area where sustainability of an aquifer is not being maintained under current or projected usage or under normal environmental conditions which are causing a serious adverse impact to an aquifer.

*Ground Water* water suitable for any beneficial purpose percolating below the earth's surface, including water suitable for domestic use, supply of a public water system or containing fewer than 10,000 mg/l total dissolved solids.

*Ground Water Emergency* shall mean an unanticipated occurrence as a result of a natural force or a man-made act which causes either the depletion of a ground water source or a lack of access to a ground water source or the likelihood of excessive pumping from a ground water source.

*Person* any natural person, corporation, association, partnership, receiver, tutor, curator, executor, administrator, fiduciary, or representative of any kind, or any governmental entity.

*Potential Critical Ground Water Area* a ground water area where drilling of new well(s) or pumpage at current rates could result in creation of a CGWA.

*Sustainability* the development and use of ground water in a manner that can be maintained for the present and future time without causing unacceptable environmental, economic, social, or health consequences.

*User* any person making any beneficial use of ground water from a well or wells owned or operated by such person or from a well or wells owned or operated solely for the production of water used by such person.

*Well or Water Well* any well drilled or constructed for the principal purpose of producing ground water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

**Chapter 33. Application Procedure**

**§3301. Who May Apply**

A. Any person owning property, a water well or utilizing water from an aquifer within the jurisdiction of the commission shall have the right to file an application with the commission calling for a public hearing relative to said aquifer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

**§3303. Notice of Intent**

A. A Notice of Intent to file an application will be published in the official parish journals. Such notice will include:

1. name, address, and telephone number;
2. a brief description of the subject matter of the proposed application;
3. a brief description of location including parish, section, township, range, and a map which shall be sufficiently clear to readily identify the location of the proposed CGWA;
4. a statement that, if the area is designated a CGWA, ground water use may be restricted;
5. a statement that all comments should be sent to:

Commissioner of Conservation  
Post Office Box 94275  
Baton Rouge, LA 70804-9275

ATTN: Groundwater Management Commission Staff  
AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3305. Application**

A. Application for Hearing. The application shall be filed in duplicate no sooner than 30 days and no later than 60 days after publication of the Notice of Intent. The application must include:

1. the name, address, telephone number, and signature of applicant;
2. a statement identifying the applicant's interest which is or may be affected by the subject matter of the application;
3. identification of the source of ground water (aquifer) to which the application applies;
4. identification of the proposed critical ground water area, including its location (section, township, range and parish) and U.S. Geological Survey topographic map of appropriate scale (1:24,000, 1:62,500, 1:100,000, or LA - DOTD Louisiana parish map outlining the perimeter of the area). Submittal of digital data is recommended. Digital map data in vector and/or raster formats should have supporting metadata;
5. statement of facts and evidence supporting the application, pursuant to §3307, and a statement on how no action would likely impact ground water resources in the area subject to request;
6. the original published page from the official parish journal evidencing publication of Notice of Intent to apply to the Ground Water Management Commission.

B. Application by Commission. The commission may initiate a hearing to consider action with respect to a specific ground water area. The commission shall notify the public pursuant to §3303 and §3501.A prior to issuing an order. The information presented by the commission at the hearing shall include but not be limited to information pursuant to §3305.A and §3307.

C. Ground Water Emergency. Notwithstanding the provisions of Paragraphs A and B hereof, the commission may initiate action in response to an application of an interested party or upon its own motion in response to a ground water emergency. Subsequent to adoption of a proposed emergency order that shall include designation of a critical ground water area and/or adoption of a emergency management plan for an affected aquifer, the commission will promptly schedule a public hearing pursuant to §3501.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3307. Criteria for a Critical Ground Water Designation**

A. Application for designation of a critical ground water area or potential critical ground water area must contain a statement of facts and supporting evidence substantiating that at least one of the following criteria applies to the source of ground water (aquifer) within such proposed area:

1. water levels in the source of ground water show declines that will render such source inadequate for current or immediate future demands without some action being taken; and/or
2. concentrations of chlorides, total dissolved solids (TDS) or other impurities that will render the source of

ground water unsuitable for domestic use have shown annual increases that will render such source unsuitable for current or immediate future demands without some action being taken; and/or

3. overall withdrawals annually have exceeded the recharge of the source of ground water that will render the source inadequate for current or immediate future demands without some action being taken.

B. Applicant shall also submit recommendations regarding the critical ground water area including but not be limited to the following:

1. the designation of the critical ground water area boundaries; and
2. the recommended management controls of the critical ground water area, that may include but not be limited to:
  - a. restrictions on the amount of withdrawals by any and/or all users in accordance with R.S. 38:3099.3.D;
  - b. requiring new permits for the drilling of new water wells including but not limited to:
    - i. spacing restrictions; and/or
    - ii. depth restrictions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3309. Commission Review**

A. Within 30 days of receipt of an application pursuant to §3305.A, the applicant will be notified whether or not the application is complete. If the commission determines an application is incomplete, the applicant shall be notified in writing of the reasons for that determination and the information needed to make such application complete. The commission may reject and return any application determined to be without merit or frivolous.

B. Using all available data presented to the commission, an analysis will be made by the commission to determine if the area under consideration meets the criteria to be designated a critical ground water area or could become a critical ground water area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3311. Recordkeeping**

A. The commission shall compile and maintain at the Office of Conservation a record of all public documents relating to any application, hearing, or decision filed with or by the commission. The commission shall make records available for public inspection free of charge and provide copies at a reasonable cost during all normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

## **Chapter 35. Hearing**

### **§3501. Notice Of Hearing**

A. Hearing Pursuant to §3305.A or §3305.B. Upon determination that an application is complete the commission shall schedule one initial public hearing at a location determined by the commission in the locality of the area affected by the application. Notice of the hearing shall contain the date, time and location of the hearing and the

location of materials available for public inspection. Such notice shall be published in the official state journal and official parish journal of each parish affected by the application at least 30 calendar days before the date of such hearing. A copy of the notice shall be sent to the applicant, any person requesting notice, and local, state and federal agencies that the commission determines may have an interest in the decision relating to the application.

B. Hearing Pursuant to §3305.C and §3505.B. The commission will notify the public of any hearing initiated by the commission either as a result of an action, pursuant to §3305.C or §3505.B, a minimum of 15 days prior to the hearing. Hearings initiated by the commission will be held in each parish affected by the commission's action under §3305.C or §3505.B. Notice of the hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection. Such notice shall be published in the official state journal and official parish journal of each parish affected by the commission's petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3503. Rules of Conduct**

A. Hearings scheduled pursuant to those rules will be fact-finding in nature and witnesses shall not be subject to cross-examination. The chairman of the commission, or a designee, shall serve as presiding officer, and shall have the discretion to establish reasonable limits upon the time allowed for statements. The applicant shall first present all relative information supporting their proposal followed by testimony and/or evidence from local, state and federal agencies and others. All interested parties shall be permitted to appear and present testimony, either in person or by their representatives. All hearings shall be recorded verbatim. Copies of the transcript shall be available for public inspection at the Office of Conservation. The testimony and all evidence received shall be made part of the administrative record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3505. Decision**

A Commission Decisions. After hearings held pursuant to §3501.A or §3305.C, the commission shall issue a written decision in the form of an order based on scientifically sound data gathered from the application, the participants in the public hearing, and any other relevant information. The order shall contain a statement of findings, and shall include but shall not be limited to:

1. the designation of the critical ground water area boundaries; and/or

2. the recommended management controls of the critical ground water area, that may include but not be limited to:

a. restrictions on the amount of withdrawals by any and/or all users in accordance with R.S. 38:3099.3.D;

b. requiring new permits for the drilling of new water wells including but not limited to:

- i. spacing restrictions; and/or
- ii. depth restrictions.

B. The commission will make the order and proposed management controls available to the applicant, participants in the original application hearing and any other persons requesting a copy thereof. The commission in accordance with §3501.B will initiate hearings on the order and proposed management controls in each parish affected by said order and management controls.

C. Final Orders. The commission will adopt final orders and management controls after completion of §3501.B. The final orders shall be made a part of the permanent records of the commission in accordance with §3311 and shall be made available to the public upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

A public hearing will be held May 29, 2002, at 1:30 p.m. in the LaSalle Building, in the Conservation and Mineral Resources Hearing Room, 617 North Third Street, Baton Rouge, LA 70802-5428. Interested persons are invited to attend and submit oral comments on the proposed Rule.

Interested persons may submit written comments on the proposed rule until 4:30 p.m., June 7, 2002, to Anthony J. Duplechin, Chief of Staff, Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275 or to fax (225) 342-5529. Interested persons may also contact the Chief of Staff at (225) 342-8244.

Karen K Gautreaux  
Chairperson

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Ground Water Management**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Costs for implementation to the state will be for hearings held under the rule. Each hearing must be recorded and transcribed. Staff travel will be reimbursed using current state travel rates. The anticipated cost of each hearing will be \$750. It is unknown how many hearings will be held

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

As there are no fees associated with the application and hearings process, there shall be no effect on the revenue collections of the state or local governments.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)**

The rule itself will have no costs and/or economic benefit. However, actions taken by the commission may result in costs and/or economic benefits, and will be determined on a case-by-case basis. Economic benefits would include the proper management of the state's groundwater resources to maintain a sufficient supply to the public for continued economic growth.



IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The rule itself will have no effect on competition and employment. However, actions taken by the commission may result in competition and employment, and will be determined on a case-by-case basis. At this time, it is impossible to tell whether there will be any effects on competition and employment.

Felix J. Boudreaux  
Commissioner  
0204#028

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Used Motor Vehicle and Parts Commission**

Rent with Option-to-Purchase Program, Identification Cards, Register of Records and Extended Warranties (LAC 46:V.3001, 3003, 3503, 3901, 4101, and 4103)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapters 4.A and 4.B, the Office of the Governor, Used Motor Vehicle and Parts Commission, notice is hereby given that the Used Motor Vehicle and Parts Commission proposes to adopt rules and regulations governing rent with option-to-purchase programs on used motor vehicles and proposes to amend sections of existing rules and regulations regarding identification cards, buyer's identification cards, motor vehicle trade shows, and business transactions. The Used Motor Vehicle and Parts Commission intends to repeal sections regarding vehicle service contracts.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARDS**

**Part V. Automotive Industry**

**Subpart 2. Used Motor Vehicle and Parts Commission  
Chapter 30. Rent With Option-to-Purchase Program**

**§3001. Definitions**

**Consummation** Cthe time a renter becomes contractually obligated on a vehicle rental purchase agreement.

**Processing Fee** Cthose administrative fees that a rental dealer may charge to rental consumer to initiate a rental purchase agreement, however designated.

**Rental Consumer** Ca natural person who rents with an option-to-purchase a used motor vehicle under a vehicle rent with option-to-purchase agreement.

**Rental Dealer** Ca person who regularly provides used motor vehicle under a vehicle rent with option-to-purchase agreement.

**Rental Purchase Agreement** Ca vehicle rent with option-to-purchase agreement for the rent of a used motor vehicle by a rental dealer in favor of a rental consumer, for personal, family or household purposes for a period of not less than twelve months.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 32:773.B.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:

**§3003. Provisions Required in all Rental Purchase Agreements**

A. All such contracts shall be made in clear and conspicuous language.

B. All such contracts be in writing, a copy of which shall be delivered to the rental consumer.

C. Condition Report. A condition report which sets forth in detail the physical condition and appearance of the vehicle prior to rental shall be completed and signed by both the rental dealer and the rental consumer.

D. Every rental purchase agreement shall contain language substantially equivalent to the following:

1. a provision indicating the description of the vehicle rented, particularly to the year, make, model, vehicle identification number, color and odometer reading;

2. a provision itemizing all costs relative to detail, delivery and/or destination of the vehicle, which shall not exceed the sum of \$150;

3. an itemization of the processing fee charged by the rental dealer, if any, which shall not exceed the sum of \$150;

4. security deposit. A provision indicating the amount of the security deposit required by the rental dealer and the conditions under which the said security deposit shall be refundable or non-refundable; however, no security deposit shall exceed the value of the vehicle as reflected by any used motor vehicle national reference guide;

5. mechanical repairs. A provision that the rental dealer cannot add repair costs to the rental purchase agreement. Further, that the rental dealer shall warrant the powertrain of the motor vehicle for any defects which existed at the time of sale for a period of 30 days or 1,000 miles, whichever is the lesser;

6. a provision offering to the rental consumer the right to secure a warranty, if one is available, for the used motor vehicle and the price of such warranty, and the cost of any deductible under the warranty;

7. a provision setting for the total amount of payments due, the number of total periodic payments and the amount of each such periodic payment;

8. a provision indicating whether the title transfer and licensing fees are included in the payments charged at consummation by the rental dealer or is to be considered additional charges;

9. a provision indicating whether a late payment is due from the rental consumer after a certain date selected for periodic payment, the amount of which payment shall not exceed the sum of \$50 or 10 percent of the monthly payment price, whichever is less;

10. a provision indicating whether a reinstatement fee shall be required in the event that the rental consumer fails to make timely rental payments and desires to reinstate the rental purchase agreement, which reinstatement fee shall not exceed the sum of \$50 plus any legitimate recovery fees or expenses;

11. a provision indicating whether the rental consumer is liable for loss or damage to the rental property and, if so, the maximum amount for which the rental consumer may be liable;

12. a provision containing the rights of *rental consumer* to terminate the *rental purchase agreement* and the consequences of such termination, if any;

13. a provision regarding the maintenance and repair of the rental property during the rental term and whether the *rental consumer* is responsible for such repairs absent the purchase of a warranty;

14. a provision indicating whether the *rental consumer* is required to secure automobile liability insurance from a licensed insurance agent in the state of Louisiana, and the minimum limits required by the *rental dealer* for both bodily injury and property damage, which, in any event, shall not be less than the minimum limits required by state law.

E. Every *rental purchase agreement* shall be signed by the *rental consumer* and an authorized representative of the *rental dealer*.

F. A *rental purchase agreement* may not contain a provision:

1. requiring a confession of judgment; and
2. authorizing a *rental dealer* or an agent of the *rental dealer* to commit a breach of the peace in the repossession of rental property or to take repossession of the rental property in any manner other than what is permitted in R.S. 14:220.

G. Every *rental dealer* must maintain a contingent automobile liability policy of insurance with minimum limits of \$100,000 per occurrence, \$300,000 aggregate and \$50,000 in property damage. It shall not be sufficient for any Rental Dealer to share in a policy of insurance which could, under any circumstance, create a limit of less than that set forth herein. Such policy shall be placed, if available, through an insurance company licensed by and admitted in the state of Louisiana.

H. A used motor vehicle dealer shall not rent with an option-to-purchase a used motor vehicle that has a recorded lien on file. The lien must be removed through the Office of Motor Vehicles prior to placing the used motor vehicle in the rental program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:773.B.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:

### **Chapter 35. Buyer Identification Card**

#### **§3503. Qualifications and Eligibility for Buyer Identification Card**

A. - A.2. ...

B. The buyer's identification card shall include the name, address, driver's license number, any one of the aforementioned dealers= license numbers, physical description, and signature of the applicant and the name and address of the employer of the applicant. The buyer's identification number to be prefixed with BI, followed by a four-digit number, then the current year (BI-0000-89). Cards obtained for the buyers will be \$25 each for Louisiana resident and \$200 each for out-of-state resident. Out-of-state buyer's must provide proof that they are a licensed used motor vehicle dealer, auto recycler, auto dismantler or employee thereof. A smaller identification card will be issued to all buyer's that will consist of individual's name, driver's license number, social security number, dealership name, dealer number, salesman number, photograph and the individual's signature. This card must be carried with the individual and produced on demand while conducting the business for which this license has been issued.

C. The buyer's identification card shall be carried upon the cardholder's person and same displayed to owner, manager, or person in charge of any salvage pool or salvage disposal sale, representative of the commission or any identifiable law enforcement agent of the state, city or municipality. The buyer's identification card is not transferable or assignable. Physical description and signature of cardholder must be compared with cardholder's driver's license for valid identification by owner, manager, or person in charge of any salvage pool or salvage disposal sale. It shall be the duty of the owner, manager or person in charge of any salvage pool or salvage disposal sale to refuse to sell to any person any wrecked or repairable motor vehicle if such person does not display a valid buyer's identification card.

1. Each buyer's identification cardholder may be accompanied to any salvage pool or salvage disposal sale by a mechanic or other technical expert of his choice, prior to the actual sale. At the time of the actual bidding, only valid bid cardholders shall be present.

2. A technical expert is one who is knowledgeable in a specialized field, that knowledge being obtained from either education or personal experience, regarding a subject matter about which persons having no particular training are incapable of forming an accurate opinion or making a correct deduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:762.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1064 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:259 (April 1989), amended by LR 15:1058 (December 1989), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:

### **Chapter 39. Business Transactions**

#### **§3901. Register of Business Transactions**

A. Every used motor vehicle dealer, automotive dismantler and parts recyclers, salvage pool or salvage disposal sale shall keep a register and/or records of all purchases and sales of motor vehicles for three years from the date of purchase or sale, showing the make, model, year, style, vehicle identification number, and name and address of the purchaser or seller of the motor vehicle; to include all titles, purchase agreements, implied and written warranties, disclaimers or service contracts and any other condition of sale or inventory and parts records. A salvage pool or salvage disposal sale, in addition to the foregoing, must also list the buyer's identification number on all transactions.

B. Such registers and/or records shall be made available for inspection by the Used Motor Vehicle and Parts Commission representatives or identified law enforcement officers of the state, parish and municipality where the business of the used motor vehicle dealer, automotive dismantler and parts recyclers, salvage pool or salvage disposal sale is located, during reasonable business hours or business days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:757.A-B.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1064 (November 1985), amended by Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:

**Chapter 41. Condition of Sale of a Motor Vehicle**

**§4101. Vehicle Service Contracts**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772.F.(3).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1064 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:466 (June 1989), repealed by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:

**§4103. Sale and Marketing of Motor Vehicle Performance Warranty Contracts**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:774.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:466 (June 1989), repealed by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:

**Family Impact Statement**

The proposed Rules of the Louisiana Used Motor Vehicle and Parts Commission should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. a family's earnings and budget;
5. the behavior and personal responsibility of children; or
6. the family's ability or that of the local government to perform the function as contained in the proposed rules.

Interested persons may submit written comments no later than 4:30 p.m. on May 20, 2002 to John M. Torrance, Executive Director, 3132 Valley Creek Drive, Baton Rouge, LA, 70808, (225) 925-3870.

John M. Torrance  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Rent with Option-to-Purchase Program, Identification Cards, Register of Records and Extended Warranties**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The issuance of identification cards for buyers will result in the ordering of 2,200 ID cards, 2,200 envelopes and postage for 2,200 mail outs. The initial cost for implementing this rule will be \$1,598. A 2 percent increase in expenses was calculated for FY 03-04 and FY 04-05. Self-generated funds will be used to cover the cost of this proposed rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Revenues will not be affected by these proposed rules.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Since limits are set regarding certain fees to be charged and security deposits, this may affect the income of the used motor vehicle dealer. These fees are not available to this agency since we do not have a list of the fees currently being charged by the used motor vehicle dealer. The proposed rules will have a positive affect on the consumers by eliminating the possibility of being overcharged.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rules will have a negative effect on those dealers who are over-charging consumers with regard to fees and security deposits. However, for those dealers who are operating within the proposed rules, there will be no effect on competition and/or employment.

John M. Torrance  
Executive Director  
0204#024

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of Public Health**

**Commercial Seafood Inspection Program**

Notice is hereby given, 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. 40:5, intends to amend and revise Chapter IX Chapter 9:051-1, 9:051-1-A, 9:051-1-F, 9:051-1-F-2, defining Post-Harvest Treatment Process (9:001), and create 9:052-3-F which would adopt the Post-Harvest Processing requirements of the National Shellfish Sanitation Program (NSSP) to Chapter IX of the Louisiana State Sanitary Code. These changes are needed in order for this state to comply with the latest recommendations of the National Shellfish Sanitation Program as required by R.S. 40:5.3.

The first proposed rule change 9:051-1 would delete the words (arranged in the specific order) which is needed in order for this State to comply with the National Shellfish Sanitation Program as required by R.S. 40:5.3. The proposed change would contain the same information regarding shellstock tagging as required by the National Shellfish Sanitation Program, but not in specific order.

The second proposed rule change 9:051-1-A would add the wording (and the original shellstock shipper's number if different) which is needed in order for this State to comply with the National Shellfish Sanitation Program as required by R.S. 40:5.3. The proposed change would contain the same information as required by the National Shellfish Sanitation Program in regards to tagging requirements.

The third proposed rule change 9:051-1-F would add the wording (or their equivalent as approved by the State Authority) which is needed in order for the State to comply with the National Shellfish Sanitation Program as required by R.S. 40:5.3. The proposed rule change would contain the basic information required by the National Shellfish Sanitation Program.

The fourth proposed rule change 9:051-1-F-2 would remove this paragraph in its entirety, since this is not a requirement of the National Shellfish Sanitation Program.

The fifth proposed rule change 9:052-3-F would adopt the Post-Harvest Treatment Processing Requirements of the National Shellfish Sanitation Program (NSSP) to Chapter IX of the Louisiana State Sanitary Code and Section 9:001 would define Post-Harvest Treatment Process.

The proposed revisions to Chapter IX are as follows.

**Louisiana State Sanitary Code**

**Chapter IX Commercial Seafood Inspection Program**

**9:001 Definitions**

Unless otherwise specifically provided herein, the following words and terms used in this Chapter of the Sanitary Code, and all other Chapters which are adopted or may be adopted, are defined for the purposes thereof as follows:

\* \* \* ?

*Post-Harvest Processing*Ca treatment process approved by the Louisiana Department of Health and Hospitals Office of Public Health by which oysters are treated to reduce levels of *Vibrio vulnificus* and/or *Vibrio parahaemolyticus* and/or other specified pathogens to non-detectable levels.

\* \* \*

**9:051-1**

The initial tagging of the shell-stock shall be performed by the harvester before the shell-stock are removed from the harvester's boat. In the event that shell-stock are harvested from more than one growing area on a given day, the shell-stock shall be sacked and tagged before leaving from the growing area from which the shell-stock was harvested. The harvester's tags shall contain legible information as follows:

**9:051-1-A**

A place shall be provided where the dealers name, address, certification number assigned by the Office of Public Health, Seafood Sanitation Program and the original shell-stock shipper's number if different.

**9:051-1-B**

The harvester's identification number assigned by the Department of Wildlife and Fisheries;

**9:051-1-C**

The date of harvesting;

**9:051-1-D**

The most precise identification of the harvest site or aquaculture location as practicable;

**9:051-1-E**

Type and quantity of shellfish; and

**9:051-1-F**

The following additional statements or their equivalent as approved by the State Authority shall appear on each tag in bold capitalized letters:

**9:051-1-F-1**

THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS.

**9:051-1-F-2** Delete the following paragraph and re-number 9:051-F-3 to 9:051-F-2 and retain same language.

THIS PRODUCT SHOULD NOT BE CONSUMED RAW AFTER 14 DAYS FROM THE DATE OF HARVEST; BEYOND THIS 14-DAY PERIOD, THIS PRODUCT SHOULD BE THOROUGHLY COOKED.

**9:051-F-2**

AS IS THE CASE WITH CONSUMING OTHER RAW ANIMAL PROTEIN PRODUCTS, THERE IS A RISK ASSOCIATED WITH CONSUMING RAW OYSTERS, CLAIMS AND MUSSELS. IF YOU SUFFER FROM CHRONIC ILLNESS OF THE LIVER, STOMACH, OR BLOOD OR HAVE IMMUNE DISORDERS, DO NOT EAT THESE PRODUCTS RAW. RETAILERS PLEASE ADVISE CUSTOMERS. (Repromulgated 02/20/91 and 05/20/93 and 08/20/95)

**9:052-3-F-Post-Harvest Processing**

(A) If a dealer elects to use a process to reduce the level(s) of one target pathogen or some target pathogens, or all pathogens of public health concern in shellfish, the dealer shall:

(1) Have a Hazard Analysis Critical Control Point (HACCP) plan approved by the Authority for the process that ensures that the target pathogen(s) are at safe levels for the at risk population in product that has been subjected to the process.

(a) For processes that target *Vibrio vulnificus*, the level of *Vibrio vulnificus* in product that has been subjected to the process shall be non-detectable (<3 MPN/gram), to be determined by use of the *Vibrio vulnificus* FDA approved EIA procedure of Tamplin, et al, as described in Chapter 9 of the FDA Bacteriological Analytical Manual, 7<sup>th</sup> Edition, 1992.

(b) For processes that target *Vibrio parahaemolyticus*, the level of *Vibrio parahaemolyticus* in product that has been subjected to the process shall be non-detectable (<1 CFU/0.1 gram).

(c) For processes that target other pathogens, the level of those pathogens in product that has been subjected to the process shall be below the appropriate FDA action level, or, in the absence of such a level, below the appropriate level as determined by the ISSC.

(d) The ability of the process to reliably achieve the appropriate reduction in the target pathogen(s) shall be validated by a study approved by the Authority, with the concurrence of FDA.

(e) The HACCP plan shall include:

(i) Process controls to ensure that the end point criteria are met for every lot; and,

(ii) A sampling program to periodically verify that the end point criteria are met.

(2) Package and label all shellfish in accordance with all requirements of this Ordinance. This includes labeling all shellfish which have been subjected to the process but which are not frozen in accordance with applicable shellfish tagging and labeling requirements in Chapter X.05 and X.06 of the National Shellfish Sanitation Program Model Ordinance.

(3) Keep records in accordance with Chapter X.07 of the National Shellfish Sanitation Program Model Ordinance.

(B) A dealer who meets the requirements of this section may label product that has been subjected to the reduction process as :

(1) "Processed for added safety," if the process reduces the levels of all pathogens of public health concern to safe levels for the at risk population;

(2) "Processed to reduce [name of target pathogen(s)] to non-detectable levels," if the process reduces one or more, but not all, pathogens of public health concern to safe levels for the at risk population, and if that level is non-detectable; or

(3) "Processed to reduce [name of target pathogen(s)] to non-detectable levels for added safety," if the process reduces one or more, but not all, pathogens of public health concern to safe levels for the at risk population, and if that level is non-detectable; or

(4) A term that describes the type of process applied (e.g. "pasteurized," "individually quick frozen," "pressure treated") may be substituted for the word "processed" in the options contained in (B)(1)-(3).

(C) For the purposes of refrigeration, if the end product is dead, the product shall be treated as shucked product. If the end product is live, the product shall be treated as shellstock.

(D) A Harvester-Dealer Oyster Tag, blue in color, shall be used for shellstock that has undergone a Post-Harvest Treatment Process.

(E) Certification number of the Post-Harvest treatment facility is required on all Post-Harvest treated tags.

A public hearing on the adoption by reference will be held on Friday, May 24, 2002 at 10:00 a.m. at 325 Loyola Avenue Room 511 New Orleans, La. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at said hearing.

Interested persons may submit written comments to David Guilbeau, Sanitarian Program Administrator, Commercial Seafood Program, 6867 Bluebonnet Blvd., Baton Rouge, LA 70810 by the close of business on May 27, 2002. He is responsible for responding to inquiries regarding this adoption.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Commercial Seafood  
Inspection Program**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no savings or cost to local units. In Fiscal Year 2001/2002 the agency will incur a one-time fee of approximately \$160.00 for publication in the Louisiana State Register.

**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)**

No economic benefit and estimates cost will vary with individual firms.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Since this is a relatively new process, it is yet to be determined if there will be any impact on competition and employment in either the public or private as results of this rule adoption.

Madeline McAndrew  
Assistant Secretary  
0204#051

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of Public Health**

**Onsite Wastewater Program Lot Size Clarification**

Notice is hereby given, in accordance with provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health intends to amend and revise Chapter XIII Section 13:011-2(7) of the Louisiana Sanitary Code, pursuant to R.S. 40:4, as amended by Acts 1978, No. 786; Acts 1982, No. 619; Acts 1986, No. 885; Acts 1988, No. 942. The amendment to this portion of the Louisiana Sanitary Code is necessary in order to clarify the intent of lot size restrictions, and is not the result of a legislative bill.

The proposed rule change to 13:011-2(7) would add language which sets a minimum lot size which can qualify for individual sewage treatment technology. The proposed revision to Chapter XIII is as follows.

**Louisiana State Sanitary Code  
Chapter XIII Sewage Disposal**

**13:011-2 Community Sewerage System Required:**

13:011-2. 1-6.c. ...

7. Where lots of "record" (i.e., lots created by formal subdivision prior to July 28, 1967) are combined (in accord with the definition of a subdivision) to create a new, larger, single lot, and no re-subdivision of the property is involved. On July 20, 2002 and thereafter, in no case shall the newly created lots have less than 50 feet of frontage or be less than 5000 square feet in area.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:4

**HISTORICAL NOTE:** Promulgated by Department of Health and Hospitals, Office of Public Health, LR 10:802 (October 1984); Emergency Rule (July 24, 1985) and LR 11:1086 (November 1985); LR 19:49 (January 1993); LR 28:

A public hearing will be held on Friday, May 24, 2002 at 10:30 a.m. in the State Office Building, Room 511, 325 Loyola Avenue, New Orleans, LA. Written comments regarding the proposed rule must be received no later than May 27, 2002 and should be addressed to James Antoon, Chief, Sanitarian Services, 6867 Bluebonnet, Baton Rouge, LA 70810.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Onsite Wastewater Program  
Lot Size Clarification**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be an estimated \$120 implementation cost for the publication of this rulemaking in the Louisiana Register during FY 2001/2002.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

No increased revenue collections are expected to accrue to state and local governmental units as a result of this rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no projected persons or non-governmental groups affected by the proposed action which is a clarification of provisions of the Louisiana State Sanitary Code.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no projected impact on competition and employment in the public and private sectors.

Madeline W. McAndrew  
Assistant Secretary  
0204#053

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary**

Capital Area Human Services District  
(LAC 48:I.Chapter 27)

Under the authority of R.S. 46:2661 et seq. as enacted by Act 54 of the first Extraordinary Session of 1999, the Department of Health and Hospitals proposes to adopt the following rule.

**Title 48**

**PUBLIC HEALTH GENERAL**

**Part I. General Administration**

**Subpart 1. General**

**Chapter 27. Capital Area Human Services District**

**§2701. Introduction**

A. This agreement is entered into by and between Department of Health and Hospitals, hereinafter referred to as DHH, and Capital Area Human Services District, hereinafter referred to as CAHSD, in compliance with LA R.S. 46:2661 through 46:2666 as well as any subsequent legislation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

**§2703. Purpose and General Agreement**

A. The Department of Health and Hospitals is authorized by law to provide for the direction, operation, development and management of programs of community-based mental health, mental retardation/developmental disabilities, addictive disorders, public health and related activities for eligible consumers in Louisiana.

B. R.S. 46:2661-2666 et seq. authorizes CAHSD to provide services of community-based mental health, developmental disabilities, addictive disorders, public health and related activities for eligible consumers in the CAHSD, which includes East Baton Rouge, West Baton Rouge, Ascension, Iberville, and East and West Feliciana, Pointe Coupee parishes; and to assure that services meet all relevant federal and state regulations; and to provide the functions necessary for the administration of such services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

**§2705. Designation of Liaisons**

A. The primary liaison persons under this agreement are:

1. for DHH Deputy Secretary;
2. for CAHSD Chairperson.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

**§2709. Services to be Delivered**

A. In order to provide a broad spectrum of coordinated public services to consumers of the Office of Mental Health hereinafter referred to as OMH, the Office for Citizens with Developmental Disabilities hereinafter referred to as OCDD, the Office for Addictive Disorders hereinafter referred to as OAD, the Office of Public Health hereinafter referred to as OPH and for the District Administration, the CAHSD will assume programmatic, administrative and fiscal responsibilities for including, but not limited to, the following:

1. OCDD community support;
2. mental health services consistent with the State Mental Health Plan, as required under the annual Mental Health Block Grant Plan;
3. outpatient treatment (non-intensive)-OAD;
4. community-based services-OAD;
5. intensive outpatient treatment/day treatment-OAD;
6. non-medical/social detoxification-OAD;
7. primary prevention-OAD;
8. adult inpatient treatment services-OAD;
9. transition to recovery homes (when funds and placements are available);

10. residential board and care (when funds and placements are available)-OAD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

**§2711. Responsibilities of Each Party**

A. CAHSD accepts the following responsibilities:

1. to perform the functions which provide community-based services and continuity of care for the diagnosis, prevention, detection, treatment, rehabilitation and follow-up care of mental and emotional illness;

2. to be responsible for community-based programs and functions relating to the care, diagnosis, eligibility determination, training, treatment, and case management of developmentally disabled and autistic persons as defined by the MRDD law, and to follow the rule governing admissions to OCDD Developmental Centers;

3. to be responsible for the delivery and supervision of transition services and case management and provide supports to person waiting for Waiver Services when an individual transitions to the community.

4. to provide for the gradual assumption of community-based public health services which will be determined to be feasible through consultation with the Office of Public Health;

5. to provide services related to the care, diagnosis, training, treatment, and education of, and primary prevention of addiction. The criteria for admission and treatment must be parallel to OAD state operated programs;

6. to maintain services in community-based mental health, developmental disabilities, and substance abuse at least at the same level as the state maintains similar programs;

7. to ensure that the quality of services delivered is equal to or higher than the quality of services previously delivered by the state;

8. to perform human resources functions necessary for the operation of the CAHSD;

9. to be responsible for the provision of any function/service, reporting or monitoring, mandated by the Block Grant Plan of each respective program office;

10. to provide systems management and services data/reports in a format, and content, and frequency content as that required of all regions by each DHH program office. Specific content of required information sets will be negotiated and issued annually through program office directives;

11. to utilize ARAMIS, MIS, Mental Health's SPOE and any other required DHH/program office systems to meet state and federal reporting requirements. The CAHSD will use the OCDD Individual Tracking System and/or other designated MIS system OCDD will allow OCDD to electronically upload and download information at prescribed intervals. No information will be uploaded by OCDD without prior notification of CAHSD;

12. to make available human resource staffing data for on-site review;

13. to maintain and support Single Point of Entry (SPOE) state standard;

14. to provide for successful delivery of services to persons discharged from state facilities into the CAHSD service area by collaborative discharge planning;

15. to provide in-kind or hard match resources as required for acceptance of federal grant or entitlement funds utilized for services in the CAHSD as appropriately and collaboratively applied for;

16. to make available a list of all social and professional services available to children and adults through contractual agreement with local providers. List shall include names of contractor, dollar figure and brief description of services;

17. to work with OAD to assure that all requirements and set asides of the Substance Abuse Block Grant are adhered to in the delivery of services;

18. to develop and utilize a 5 year strategic plan as required by Act 1465;

19. to monitor the quality of supports delivered to developmentally disabled individuals in state funded supported living arrangements;

20. to report to OMH on a monthly basis data consistent with that reported in DHH operated regions in order to assure statewide data integrity and comparability across all 64 parishes. The format for reporting this information must comply with OMH data transmission requirements as specified by the Assistant Secretary for OMH;

21. to further all other CAHSD sites currently receiving materials from OPH shall continue to receive such provided current level funding is available from State and Federal resources. Availability of materials shall also be based on the incidence rate of HIV in Region II and throughout the state.

22. to comply with OAD movement toward research-proven best practices and adhere to the established standard of care.

B. DHH retains/accepts the following responsibilities:

1. operation and management of any inpatient facility under jurisdiction of the DHH except that the CAHSD shall have authority and responsibility for determination of eligibility for receipt of such inpatient services (mental health's single point of entry function) which were determined at the regional level prior to the initiation of this Agreement;

2. operation, management and performance of functions and services for environmental health;

3. operation, management and performance of functions related to the Louisiana Vital Records Registry and the collection of vital statistics;

4. operation, management and performance of functions and services related to laboratory analysis in the area of personal and environmental health;

5. operation, management and performance of functions and services related to education provided by or authorized by any state or local educational agency;

6. monitoring this service agreement, assuring corrective action through coordination with CAHSD and reporting failures to comply to the Governor's office;

7. operation, management and performance of functions for pre-admission screening and resident review process for Nursing Home Reform;

8. sharing with CAHSD information regarding but not limited to program data, statistical data, and planning documents that pertain to the CAHSD. Statewide information provided on a regional basis to providers, consumers, and advocates, shall either include accurate data for CAHSD, as confirmed by CAHSD or shall include a statement that information for Region 2 (CAHSD) is available on request. This is necessary to make community stakeholders aware that CAHSD is participating in the submission of the same data reports as are required of the other regions;

9. communicating any planned amendments to current law establishing CAHSD, or new legislation that is primarily directed to impacting CAHSD funding or administration or programs, prior to submission to the Governor's Office or to a legislative author;

10. reporting of statewide performance or comparisons, which are circulated outside of the DHH Program Offices, which include data submitted directly by CAHSD, or which are generated from data transmission program in which CAHSD participants will be provided to CAHSD;

11. providing fair and equal access to all appropriately referred citizens residing in the parishes served by CAHSD;

12. inviting the CAHSD CSRM to OCDD meetings that include the CSRM's of the 8 regions under OCDD administration, when appropriate;

13. meeting with CAHSD to discuss and plan for any necessary upgrades in hardware, software or other devices necessary for the electronic submission of data which is required of CAHSD;

a. CAHD's Executive Director shall be included in discussions that specifically relate to changes in CAHSD program or financing, prior to final decision-making.

15. in general, planning, managing and delivering services funded under this agreement as required in order to be consistent with the priorities, policies and strategic plans of DHH, its program offices, and related local initiatives. DHH shall include the CAHSD as appropriate in the development of these plans and priorities;

16. determining if community-based mental health, developmental disabilities, addictive disorders, and public health services are delivered at least at the same level by CAHSD as the State provides for similar programs in other areas, performance indicators shall be established. Such indicators will measure extensiveness of services, accessibility of services, availability of services and, most important, quality of services. The CAHSD will not be required to meet performance indicators which are not mandated for state-operated programs in these service areas.

#### C. Joint Responsibilities

1. CAHSD's progress toward achieving outcomes which meet or exceed those realized by DHH-operated programs in the affected geographic region shall be measured by comparing the CAHSD data on results to baseline statistics reported by Regional DHH programs for the year prior to July 1, 1997. Specific outcome measurements/performance indicators to be compared will be jointly agreed upon by CAHSD and DHH.

2. The CAHSD shall work closely with OCDD in transitioning individuals from all Developmental Centers to the district and will be responsible for the oversight of the service providers to ensure that their recipient receives appropriate services and outcomes as designated in the Comprehensive Plan of Care.

3. CAHSD will work with the Office for Addictive Disorders to assure the key performance indicators sent to the DOA are the same for CAHSD and Office for Addictive Disorders.

4. CAHSD will work with the Office for Addictive Disorders to assure there is a clear audit trail for linking alcohol and drug abuse funding and staffing to alcohol and drug abuse services.

5. CAHSD will collaborate with Region II OPH managers to assist them to perform community-based functions which provide services and continuity of care for education, prevention, detection, treatment, rehabilitation and follow up care related to personal health.

6. The CAHSD shall notify the DHH Bureau of Legal Services and relative Program Office in a timely manner to assure proper representation in all judicial commitments and court events involving placement in DHH programs. The CAHSD shall also provide program staff as representatives to assist DHH in all judicial commitments and court events

involving placement in DHH programs. DHH will provide legal support and representation in judicial commitments to the Department.

7. Budget request for new and expanded programs or request for additional funding for existing programs will be discussed with the appropriate personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

#### **§2713. Reallocation of Resources/Staff and Financial Agreements**

A. For FY01/02, DHH agrees to transfer financial resources in accordance with the memorandum of understanding to the direction and management of the CAHSD. The financial resources will be adjusted based upon the final appropriation for the CAHSD.

B. The CAHSD will submit to DHH an annual budget request for funding of the cost for providing the services and programs for which the CAHSD is responsible. The format for such request shall be consistent with that required by the Division of Administration and DHH. The request shall conform with the time frame established by DHH. CAHSD Executive Director will submit new and expanded program requests to the Office of the Secretary prior to submission to DOA.

C. The CAHSD shall operate within its budget allocation and report budget expenditures to the DHH.

D. Revisions of the budget may be made upon written consent between the CAHSD and DHH and, as appropriate, through the Legislative Budget Committee's BA-7 process. In the event any additional funding is appropriated and received by DHH that affects any budget categories for the direction, operation, and management of the programs of mental health, mental retardation/developmental disabilities, addictive disorders services, and public health, and related activities for any other such DHH entities or regions, the CAHSD will receive additional funds on the same basis as other program offices. In the event of a budget reduction, CAHSD will receive a proportionate reduction in its budget.

E. CAHSD shall bill DHH agencies for services they provide in a timely manner.

F. CAHSD shall not bill any DHH agency more than is shown in Attachment 1.

G. The CAHSD shall assume all financial assets and/or liabilities associated with the programs transferred.

H. CAHSD shall be responsible for repayment of any funds received which are determined ineligible and subsequently disallowed.

I. DHH shall continue to provide to CAHSD certain support services from the Office of the Secretary and from the Office of Management and Finance which are available to the regional program offices of OCDD, OMH, OAD, and OPH. The services CAHSD will continue to receive, at the level provided to other regions are:

1. communications and inquiry;
2. internal audit, fiscal management;
3. information services;
4. facility management;
5. lease management; and
6. research and development.

J. CAHSD will participate in the planning and ongoing updates to the development of a resource allocation formula



for OAD funding and comply with cost benefit analyses and outcome.

K. CAHSD will comply with the resource allocation formula and adjustments in the funding for CAHSD may be made according to this formula.

L. Should the implementation of the Area structure change the means of financing in a way that would negatively impact total funds received by the CAHSD for MH services, OMH would structurally guarantee the ability to bill for/collect funds for the service provided, or fund the District in the amount the total CAHSD/OMH portion of its budget would not be decreased from what would be allocated or collected by the other regions.

M. Funding for all medications needed by OMH Forensic clients released from the hospital into CAHSD shall be provided to CAHSD as described in the MOU between OMH and CAHSD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

#### **§2715. Joint Training and Meetings**

A. CAHSD, through its staff, will participate in DHH and other programmatic training, meetings and other activities as agreed upon by CAHSD and DHH. In a reciprocal manner, CAHSD will provide meetings, training sessions, and other activities that will be available for participation by DHH staff as mutually agreed upon by the CAHSD and the DHH. All program office meetings (trainings, information dissemination, policy development, etc.) discussing/presenting information with statewide implications shall include CAHSD staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

#### **§2717. Special Provisions**

A. The CAHSD agrees to abide by all applicable Federal, State, and Parish laws regarding nondiscrimination in service delivery and/or employment of individuals because of race, color, religion, sex, age, national origin, handicap, political beliefs, disabled veteran, veteran status, or any other non-merit factor.

B. The CAHSD shall maintain a property control system of all movable property in the possession of the CAHSD that was formally under the control of DHH, and of all additional property acquired.

C. For purposes of purchasing, travel reimbursement, and securing of social service/professional contracts, the CAHSD shall utilize established written bid/RFP policies and procedures. Such policies and procedures shall be developed in adherence to applicable statutory and administrative requirements. The CAHSD shall provide informational copies of such policies and procedures to DHH as requested.

D. The CAHSD shall abide by all court rulings and orders that affect DHH and impact entities under the CAHSD's control, and shall make reports to DHH's Bureau of Protective Services of all applicable cases of alleged abuse, neglect, exploitation, or extortion of individuals in need of protection in a format prescribed by DHH.

E. If OAD is successful in establishing an Inpatient Gambling program, this will not be managed by CAHSD since this is a statewide program.

F. In the event of a Departmental budget reduction in state general funds, or federal funds equivalent, CAHSD shall share in that reduction consistent with other DHH Agencies. If reductions occur through Executive Order, DOA, or legislative action in the appropriation schedule 09, and CAHSD is included in these reductions, then these same reductions shall not be reassessed to CAHSD by DHH agencies.

G. CAHSD shall have membership on the Region II Planning Group and the Statewide Planning Group for the HIV/AIDS Prevention Program. CAHSD shall be a voting member of the Region II Planning Group (RPG). CAHSD shall be a non-voting member of the Statewide Planning Group (SPG) unless the CAHSD member is also elected by the Region II RPG as its official delegate to the SPG. In such case, the CAHSD representative shall vote as the representative of the Region II RPG.

H. CAHSD can obtain a copy of all Region II contracts negotiated by OPH for the delivery of HIV/AIDS Prevention services by CBO's in the seven parish area served by CAHSD.

I. CAHSD can obtain a copy of all requests for funding, solicitation of offers, notices of funding availability and other such comparable documents sent out by OPH relative to community-based HIV Prevention and Treatment Services for Region II as well as any such notices received by OPH and not chosen for application by them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

#### **§2719. Renewal/Termination**

A. This agreement will cover the period of time from July 1, 2001 to June 30, 2002.

B. This agreement will be revised on an annual basis, as required by law, and will be promulgated through the Administrative Procedure Act. The annual agreement shall be published in the state register each year in order for significant changes to be considered in the budget process for the ensuing fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 28:

#### **Family Impact Statement**

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

Interested persons may submit written comment thru May 20, 2002 to John A. LaCour, DHH, Office of the Secretary, P.O. Box 629, Baton Rouge, Louisiana 70821-0629. He is the person responsible for responding to inquiries regarding this proposed rule.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Capital Area Human Services District**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Administrative cost associated with the Capital Area Human Services District (CAHSD) will be paid by the Department of Health and Hospitals (DHH) for FY 01-02 in accordance with the annual service agreement. Estimated cost of printing the Notice of Intent and The Rule is \$920.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There is no estimated costs and/or economic benefits to directly to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no estimated effect on competition and employment.

David W. Hood  
Secretary  
0204#056

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Minimum Licensing Standards CEnd Stage  
Renal Disease Treatment Facilities  
(LAC 48:I.Chapter 84)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule under 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 Administrative Procedure Act, R.S. 49:950 et seq.

Act 650 of the 1999 Regular Session of the Louisiana Legislature, in accordance with R.S. 40:2117.4, authorized the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing to promulgate rules addressing the Minimum Licensing Standards for End Stage Renal Disease Treatment Facilities. Act 650 states that any facility that presents itself to the public as a supplier of services related to dialysis/treatment for end stage renal disease is required to have a valid and current license prior to admitting any patients. The Bureau proposes to adopt the following licensing standards for all end stage renal disease treatment facilities in the State of Louisiana.

All facilities licensed after the final rule is published will be required to meet all licensing standards contained in this rule prior to receiving a license. The minimum standards for end stage renal disease treatment facilities are promulgated in accordance with the *Louisiana Administrative Code*

format and supersede all manuals and rules previously adopted.

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule governing the licensing of End Stage Renal Disease Treatment Facilities/Programs. All previous rules are hereby repealed and this rule shall replace and supersede rules previously adopted.

**Title 48**

**PUBLIC HEALTHC GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 84. End Stage Renal Disease Treatment Facilities**

**Subchapter A. General Provisions**

**§8401. Acronyms and Definitions**

A. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

**Abuse** Any act or failure to act that caused or may have caused injury to a patient knowingly, recklessly, or intentionally, including incitement to act. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it is caused by physical action or verbal statement. Patient abuse includes:

- a. any sexual activity between facility personnel and a patient;
- b. corporal punishment;
- c. efforts to intimidate;
- d. the use of any form of communication to threaten, curse, shame, or degrade a patient;
- e. restraints that do not conform to standard practice;
- f. coercive or restrictive actions that are illegal or not justified by the patient's condition, taken in response to the patient's request for discharge or refusal of medication or treatment; and
- g. any other act or omission classified as abuse by Louisiana law.

**Acronyms (Federal)C**

**CFR** Code of Federal Regulations

**CMSC** Centers for Medicare and Medicaid Services

**Network(13)C** Federal ESRD Quality Assurance Supplier

**PRO** Peer Review Organization

**Adequacy of Dialysis** Cterm describing the outcome of dialysis treatment as measured by clinical laboratory procedures.

**Adequate/Sufficient** Creasonable, enough: e.g., personnel to meet the needs of the patients.

**Advertise** Cto solicit or induce to purchase the services provided by a facility.

**Assessment** Cgathering of information relative to physiological, behavioral, sociological, spiritual and environmental impairments and strengths of the patient using the skills, education, and experience of ones professional scope of practice.

**Board(s)** Entities responsible for licensing/certification of specific professions (e.g., nursing, counselors, social workers, physicians, etc.). State of Louisiana *Boards* are the only accepted licensing organizations for all personnel.

**Chronic Maintenance Dialysis** dialysis that is regularly furnished to an End Stage Renal Disease (ESRD) patient in a hospital-based, independent (free-standing), or home setting.

**Consultation** professional oversight, advice, or services provided under contract.

**Consumer/Patient** person assigned or accepted for treatment furnished by a licensed facility as specified.

**Delegation of Tasks** assignment of duties by a registered nurse to a licensed practical nurse, or other personnel with respect to their training, ability and experience. The registered nurse cannot delegate complex nursing tasks that have not been approved as appropriate for delegation, responsibility, or tasks requiring judgment.

**Department** the Louisiana Department of Health and Hospitals (DHH). The following is a list of pertinent sections of DHH:

a. **Health Standards Section (HSS)** the section within the Bureau of Health Services Financing that is responsible for conducting surveys, issuing licenses, and serving as the regulatory body for health care facilities in the state.

b. **Office for Public Health (OPH)** the office that is responsible for the development and enforcement of public health regulations and codes.

c. **Program Integrity Section** the section within the Bureau of Health Services Financing that is responsible for investigating alleged fraud and abuse.

d. **Dialysis** a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane. The two types of dialysis that are currently in common use are hemodialysis and peritoneal dialysis.

**End-Stage Renal Disease (ESRD)** that stage of renal impairment that appears irreversible and permanent, and requires a regular course of dialysis or kidney transplantation to maintain life.

**End-Stage Renal Disease Treatment Facility** a facility that presents to the public as a supplier of chronic dialysis services including, at least, hemodialysis, but may also include peritoneal dialysis, home training, or home support.

**Exploitation** any act or process to use (either directly or indirectly) the labor or resources of a patient for monetary or personal benefit, profit, or gain of another individual or organization. Examples of exploitation include:

a. use of a patient's personal resources such as credit cards, medical assistance cards, or insurance cards to bill for inappropriate services;

b. use of the patient's food stamps or other income to purchase food or services used primarily by others; and

c. using the patient to solicit money or anything of value from the public.

**Facility** a supplier of services, including all employees, consultants, managers, owners, and volunteers as well as the premises and activities.

**Facility Protocols** the guidelines developed and utilized by facility staff to standardize patient care orders by

providing direction from physicians to registered nurses. The facility protocols do not substitute for the physician's orders.

**Medication Administration** the preparation and giving of legally prescribed individual doses of medication to a patient, including the observation and monitoring of the patient's response to the medication.

**Medication Dispensing** the compounding, packaging, and giving of legally prescribed multiple doses of medication to a patient.

**Neglect** failure to provide adequate health care or failure to provide a safe environment that is free from abuse or danger; failure to maintain adequate numbers of appropriately trained staff; or any other act or omission classified as neglect by Louisiana law.

**Office of the State Fire Marshal (OSFM)** the office that is responsible for establishing and enforcing the regulations governing building codes, including Life Safety Codes for healthcare facilities.

**On Call** immediately available for telephone consultation.

**On Duty** scheduled, present, and awake at the site to perform job duties.

**Sexual Exploitation** a pattern, practice, or scheme of conduct that can reasonably be construed as being for the purpose of sexual arousal or gratification or sexual abuse of any person. It may include sexual contact, a request for sexual contact, or a representation that sexual contact or exploitation is consistent with or part of treatment.

**Site/Premises** can identifiable location owned, leased, or controlled by a facility where any element of treatment is offered or provided.

**Stable Patient** a patient who has met facility established criteria for 90 days and continues to meet that criteria which includes parameters for, at least, adequacy of treatment, lack of hospitalizations, lack of serious health problems, and compliance with physician's orders.

**Staff** individuals who provide services for the facility in exchange for money or other compensation, including employees, contract providers/suppliers, and consultants.

**Standards** policies, procedures, rules, and other guidelines (i.e., standards of current practice) contained in this document for the licensing and operation of end-stage renal disease treatment facilities.

**Supervision** occupational oversight, responsibility and control over employees and/or service delivery by critically watching, monitoring, and providing direction.

**Unethical Conduct** conduct prohibited by the ethical standards adopted by DHH, state or national professional organizations or by a state licensing agency.

**Unprofessional Conduct** any act or omission that violates commonly accepted standards of behavior for individuals or organizations.

**Unstable Patient** patient who is experiencing a change in their medical condition or otherwise does not meet the definition of a stable patient.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

### **§8403. Licensing**

A. Any facility that presents itself to the public as a supplier of chronic dialysis treatment services and/or dialysis training to individuals diagnosed with end stage renal disease is required to have a valid and current license. The facility shall not provide services without the appropriate license and shall advertise (or otherwise notify the public or other referral entities) only for services that the facility is licensed to provide. Each licensed facility must comply with the minimum requirements in order to remain licensed. In addition, each facility is required to have a copy of the minimum standards on site, and all administrative and professional staff should be familiar with the minimum standards.

B. In order to be licensed as an ESRD facility in Louisiana the facility must also be in continuous compliance with federal regulatory requirements applicable to ESRD facilities, including but not limited to: 42 CFR §405.2135-2140; 42 CFR §405.2150, and 2160-2164.

C. The initial application process assures that the facility is capable of organizing and planning an operation to provide dialysis services as designated on the license. The application packet and procedures may be obtained from DHH/HSS. The entire application process must be completed within 90 days from the date of the original submission of a current application and application fee in order to be approved, unless an extension is granted.

D. Renewal. A license must be renewed at least annually.

#### **E. License Types**

1. Full License. A full license is issued to agencies that are in compliance with the minimum standards and all other licensing requirements. The license is valid until the date of expiration unless it is revoked or suspended prior to the date of expiration, or the license renewal is denied.

2. Provisional License. A provisional license is issued to facilities that are not in compliance with the minimum standards and whose license will be terminated if systemic changes fail to correct identified problems. Cited deficiencies shall not be detrimental to the health and safety of clients. A provisional license is valid for six months or until a designated termination date.

F. The current license shall be displayed on-site at each facility. Any license issued by DHH supersedes all other licenses and those previously issued licenses are deemed invalid. Any facility displaying and/or using an invalid or altered license will be sanctioned.

G Notification of Change. Failure to report any of the following changes in writing to HSS within 10 days of the occurrence of the change is considered delinquent and subject to sanction. Written approval of changes by DHH is required for the facility to remain in compliance with licensing standards. An on-site survey, at the discretion of HSS, may be required prior to issuance of a new license.

1. Change of Ownership. A license is non-transferable. The new owners must apply for a new license and submit a new application form, copy of the bill of sale, licensing fee, disclosure of ownership form, and information regarding relocation, name change, etc.

2. New Construction. All plans must have prior approval of the OSFM and Division of Architectural Services.

3. Renovations. All plans must have prior approval of the OSFM and Division of Architectural Services, when required.

4. Change of Address. Address changes require the issuance of a replacement license and must be prior authorized. Authorization is based on the submission of requested information to HSS.

5. Change in Services. Providing additional services requires the submission of an application packet appropriate to the new service. Interim approval may be granted based on the review of the submitted documentation. Permanent approval will be granted automatically at the next on-site survey unless the facility is found to be out of compliance. Deleting existing services requires the submission of written notification to HSS.

6. Days of Operation. Written notification to HSS is required in advance of any change in the facility's days of operation.

H. If at any time the facility decides to cease operations, the facility shall notify HSS of the date of the cessation of services, the permanent location of the records and surrender the license.

1. All active patients and pertinent information shall be referred/transferred to the nearest appropriate treatment facility.

2. Written notification and the license shall be sent to HSS within five working days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

### **§8405. Fees, Fines, and Assessments**

A. All fees must be submitted to DHH in the form of a company or certified check or money order, and made payable to the Department of Health and Hospitals. All fees are non-refundable and non-transferable.

1. The current fee schedule is available upon request.

2. The fee for the initial application and licensing process shall be submitted prior to review and consideration of the licensing application.

3. The annual renewal fee is payable in advance of the issuance of the renewal license.

4. A fee must accompany any request requiring the issuance of a replacement license.

5. A renewal or other fee is considered delinquent after the due date and an additional fee shall be assessed beginning on the day after the date due. No license will be issued until applicable fees are paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

### **§8407. Survey**

A. All surveys shall be unannounced and may be conducted with other agency personnel and/or personnel from other local, state or federal agencies. A survey of all aspects of the facility's operation is required prior to issuing a license.

B. Initial Survey. DHH shall determine through an on-site review if the facility is capable of becoming fully

operational. The procedures for the on-site review may be obtained from HSS.

C. Annual Survey. An on-site survey of the facility is performed or an attestation from the facility is received annually to assure continuous adherence to standards.

D. Follow-Up Surveys. An on-site visit is performed or documentation is requested for a desk review to ensure that corrective actions have been taken as stated in the plan of corrections and to assure continued compliance between surveys.

E. DHH shall determine the type and extent of investigation to be made in response to complaints in accordance with R.S. 40:2009.13 et seq.

1. The facility may be required to do an internal investigation and submit a report to HSS.

2. HSS and other federal, state and local agencies may conduct an on-site focused or complete survey as appropriate.

F. All survey results will be available for public inspection 60 days after the survey or on the date that an acceptable plan of correction is received from the facility, whichever is sooner.

1. The facility may be allowed up to 60 days to make all necessary corrections for minor violations that do not directly involve patient care.

2. Adverse action will be initiated for violations that are not minor or directly affect patient care.

G. Written plans of correction shall be submitted to HSS to describe actions taken by the facility in response to cited violations. The plan must be submitted within 10 days of the date of the receipt of the notice of deficiencies, or the provider may be sanctioned. All components of the corrective action plan must be specific and realistic, including the dates of completion.

1. The correction plan shall include the following components:

a. the actions taken to correct any problems caused by a deficient practice directed to a specific patient;

b. the actions taken to identify other patients who may also have been affected by a deficient practice, and to assure that corrective action will have a positive impact for all patients;

c. the systemic changes made to ensure that the deficient practice will not recur;

d. a monitoring plan developed to prevent recurrence; and

e. the date(s) when corrective action will be completed.

H. Corrections must be completed within 60 days of the survey unless HSS directs that corrective action be completed in less time due to danger or potential danger to patients or staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

#### **§8409. Adverse Actions**

A. DHH reserves the right to suspend, deny (initial or renewal), or revoke any license at the discretion of the Secretary or his/her designee. Any involuntary termination of a facility's license or voluntary termination to avoid adverse action automatically disqualifies the facility and

those associated with the facility from applying for a license for a period of at least one year.

B. Provisional License Designation. See §8403.E.2.

C. Denial of Initial Licensing. An initial license request may be denied in accordance with R.S. 40:2117.5(A).

D. A license may be revoked or denied for any of the following nonexclusive reasons. See also R.S. 40:2117.5.

1. cruelty or indifference to the welfare of the patients;

2. misappropriation or conversion of the property of the patients; or

3. violation of any provision of this Part or of the minimum standards, rules, regulations, or orders promulgated hereunder:

a. providing services to more stations than authorized by license;

b. repeated failure to adhere to rules and regulations that resulted in the issuance of a provisional license or other sanction;

c. serious violation of the standards or current professional standards of practice;

d. failure to submit corrective action plans for identified violations;

e. reasonable cause to suspect that patient health and/or safety is jeopardized;

f. reliable evidence that the facility has:

i. falsified records;

ii. failed to provide optimum therapy in accordance with current standards of practice; or

iii. has bribed, solicited or harassed any person to use the services of any particular facility;

g. failure to submit required fees in a timely manner;

h. failure to cooperate with a survey and/or investigation by DHH and/or authorized agencies;

i. failure to employ and utilize qualified professionals; or

j. failure to meet operational requirements as defined in §8423.C;

4. permitting, aiding, or abetting the unlawful, illicit, or unauthorized use of drugs or alcohol within the facility;

5. conviction or plea of nolo contendere by the applicant for a felony. If the applicant is an agency, the head of that agency must be free of such conviction. If a subordinate employee is convicted of a felony, the matter must be handled administratively to the satisfaction of HSS;

6. documented information of past or present conduct or practices of the facility that are detrimental to the welfare of the patients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

#### **§8411. Appeals**

A. The Health Standards Section shall give at least 30 days notice of the denial of renewal or revocation of license unless it determines that the health and/or safety of patients is in jeopardy. In the event that it is determined that the health and/or safety of patients is in jeopardy, the license may be revoked immediately with appeal rights granted after the facility ceases operation and patients are transferred to another facility. The facility may appeal within 30 days following the revocation.

B. Requests for an administrative reconsideration must be submitted in writing to HSS within 15 days of the receipt of the denial of renewal or revocation notice.

C. Requests for an administrative appeal must be submitted in writing to DHH, Office of the Secretary within 15 days of the receipt of the denial of renewal or revocation notice. Requests for administrative reconsideration do not affect the timeframes for requesting an administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

### **Subchapter B. Facility Operations**

#### **§8423. Operational Procedures**

A. Each facility shall establish facility-specific, written policy and implement such policy in these areas:

1. procedures to ensure the health, safety, and well-being of patients;
2. procedures to ensure that patients receive optimum treatment;
3. criteria to assure access to quality care;
4. protocols to assure uniform and quality assessment, diagnosis, evaluation, and referral to the appropriate level of care;
5. procedures to assure operational capability and compliance;
6. procedures to assure that only qualified personnel are providing care within their respective scope of practice;
7. procedures to assure that the delivery of services shall be cost-effective and in conformity with current standards of practice;
8. procedures to assure that patient information is collected, maintained, and stored according to current standards of practice; and
9. standards of conduct for all personnel in the facility.

B. Continuous Quality Program (CQP). The facility shall:

1. have ongoing programs to assure that the overall function of the facility is in compliance with federal, state, and local laws, and is meeting the needs of the citizens of the area as well as attaining the goals and objectives developed from the mission statement established by the facility;
2. focus on improving patient outcomes and patient satisfaction;
3. have objective measures to allow tracking of performance over time to ensure that improvements are sustained;
4. develop and/or adopt quality indicators that are predictive of desired outcomes and can be measured, analyzed and tracked;
5. identify its own measure of performance for the activities that are identified as priorities in quality assessment and performance improvement strategy;
6. immediately correct problems that are identified through its quality assessment and improvement program that actually or potentially affect the health and safety of the patients;
7. develop and implement an annual internal evaluation procedure to collect necessary data for formulation of a plan, In addition, conduct quarterly meetings of a professional staff committee (at least 3

individuals) to select and assess continuous quality activities, to set goals for the quarter, to evaluate the activities of the previous quarter, and to immediately implement any changes that would protect the patients from potential harm or injury;

8. implement a quarterly utilization review of 5 percent of the active patient records (minimum of 10 records) by professional staff;

9. complete an annual documented review of policies, procedures, financial data, patient statistics, and survey data by the governing board/regional administrator; and

10. participate as requested with state and federal initiatives to assure quality care.

C. Operational Requirements. The facility shall:

1. be fully operational for the business of providing dialysis as indicated on the approved original application or notice of change;
2. be available as a community resource;
3. be in compliance with the facility within a facility rule, if applicable (R.S. 40:2007);
4. have active patients at the time of any survey after the initial survey;
5. utilize staff to provide services based on the needs of their current patients;
6. have required staff on duty at all times during operational hours;
7. develop, implement, and enforce policies and/or procedures that eliminate or greatly reduce the risk of patient care errors; and
8. develop procedures to communicate to staff and to respond immediately to market warnings, alerts, and recalls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

#### **§8425. Facility Records**

A. Record keeping shall be in accordance with accepted standards to assure the development and implementation of facility specific policies and procedures to adhere to all licensing standards. Specific facility records shall contain:

1. personnel information including:
  - a. annual health screens in accordance with CDC/OPH guidelines;
  - b. actual hours of work;
  - c. orientation/training/in-services;
  - d. disciplinary actions;
  - e. verification of professional credentials, licensing/certification and renewals; and
  - f. job descriptions/performance expectations;
2. operational information including:
  - a. organizational chart;
  - b. payment methods in accordance with the Wage and Hour Board;
  - c. proof of general and professional liability insurance in the amount of at least, \$500,000;
  - d. projected plan of operations based on the findings of the facility specific continuous improvement program; and
  - e. written agreements with other entities to assure adherence to licensing standards and continuity of care, e.g., transplant services, lab services, waste removal, hospital, etc.;

3. identification of a governing body composed of adults who have legal authority over the policies and activities of the facility as required by 42 CFR §405.2136. All private providers must comply with this requirement.

B. Required Facility Reports. The facility director shall report the following incidents either verbally or by facsimile to HSS within 24 hours of discovery:

1. fire and/or natural disasters;
2. any substantial disruption of program operation;
3. any inappropriate treatment or service resulting in death or serious injury; and
4. serious violations of laws, rules, and professional and ethical codes of conduct by facility personnel/volunteers that resulted in harm or the potential for harm to the patient(s).

C. The facility shall post a legible copy of the following documents in full view of patients, visitors, and employees:

1. patient bill of rights/responsibilities;
2. escape routes;
3. facility specific rules, responsibilities and grievance procedures;
4. current license and variances; and
5. current licensing survey findings.

D. The facility shall maintain the following operational records:

1. equipment maintenance;
2. water testing logs;
3. reprocessing logs;
4. fire and safety logs;
5. in-services/attendance records;
6. personnel records; and
7. disinfection logs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

#### **§8427. Health and Safety**

##### **A. Infection Control**

1. The facility shall protect staff, patients, and visitors from potential and/or actual harm from infectious disease by utilizing the following policies and procedures.

a. Development and implementation of a universal precautions program that includes education and practice.

b. Development and implementation of a infection control program to report, evaluate, and maintain documentation pertaining to the spread of infectious disease, including data collection and analysis, corrective actions, and assignment of responsibility to designated medical staff person (including "access infections").

c. The facility shall strictly adhere to all sanitation requirements.

2. The facility shall establish and maintain a clean environment by the implementation of the following housekeeping policies and procedures:

a. supplies and equipment shall be available to staff and/or patients;

b. consistent and constant monitoring and cleaning of all areas of the facility shall be practiced; and

3. the facility may contract for services necessary to maintain a clean environment.

##### **B. Sanitation**

1. Food and waste shall be stored, handled, and removed in a way that will not spread disease, cause odors, or provide a breeding place for pests.

2. If there is evidence of pests, the facility shall contract for pest control.

3. The facility shall have an adequate number of sanitized non-disposable or disposable hot/cold cups for patient use.

##### **C. Environmental Safety**

1. The entire facility (including grounds, buildings, furniture, appliances, and equipment) shall be structurally sound, in good repair, clean, and free from health and safety hazards.

2. The facility shall comply with the Americans with Disabilities Act (ADA).

3. The facility shall have adequate space, furniture, and supplies.

4. The facility shall prohibit firearms and/or other weapons.

5. Poisonous, toxic and flammable materials shall be properly labeled, stored, and used safely.

6. The facility shall take all possible precautions to protect the staff, patients and visitors from accidents or unnecessary injuries or illnesses.

D. The facility shall respond effectively during a fire or other emergency. Every facility shall:

1. have emergency evacuation procedures that include provisions for the handicapped;

2. hold simulated fire drills on each shift at least quarterly and correct identified problems;

3. be able to safely clear the building in a timely manner whenever necessary;

4. conspicuously post exit diagrams throughout the facility;

5. post emergency numbers by all phones; and

6. have adequate first aid supplies that are visible and easy to access whenever necessary.

E. The facility shall have a written facility specific disaster plan. The on-duty staff shall be able to access and implement the plan when required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

#### **§8429. Physical Plant Requirements**

A. All construction plans will be reviewed by the DHH Division of Architectural Services using the current edition of the *American Institute of Architect's Guidelines for Construction for Hospital and Health Care Facilities*.

B. The Office of the State Fire Marshal shall determine fire safety review requirements based upon applicable regulations.

##### **C. Required Inspections**

1. The facility shall pass all required inspections and keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations. The inspections must be signed, dated, and free of any outstanding violations/citations. The following inspections are required:

- a. annual fire marshal inspection;

- b. annual inspection of the fire alarm system by a licensed contractor;
- c. quarterly fire alarm system test by facility staff;
- d. gas pipe pressure test once every three years by the local gas company or a licensed plumber, if applicable;
- e. annual inspection and maintenance of fire extinguishers by personnel licensed or certified to perform those duties; and
- f. regular inspections of elevators, if applicable.

2. The following documentation shall be on file in the facility:

- a. certificate of occupancy as required by the local authorities;
- b. DHH approval of the water supply/system;
- c. DHH approval of the sewage system; and
- d. documentation that any liquefied petroleum supply has been inspected and approved.

D. Exterior Space Requirements. The facility shall:

- 1. ensure that all structures on the grounds of the facility that are accessible to patients are maintained in good repair and are free from identified hazards to health or safety;
- 2. maintain the grounds of the facility in an acceptable manner and ensure that the grounds are free from any hazard to health or safety;
- 3. store garbage and rubbish securely in non-combustible, covered containers that are emptied on a regular basis;
- 4. separate trash collection receptacles and incinerators from patient activity areas and locate all containers so that they are not a nuisance to neighbors; and
- 5. store and dispose of all medical waste in accordance with local, state, and federal guidelines.

E. Interior Space Requirements

- 1. Bathrooms. Minimum facilities shall include:
  - a. adequate operational fixtures that meet *Louisiana State Plumbing Code*. All fixtures must be functional and have the appropriate drain and drain trap to prevent sewage gas escape back into the facility;
  - b. an adequate supply of hot water. Hot water temperature at the point of service to patients shall be between 105°F and 120°F;
  - c. toilets with seats;
  - d. an adequate supply of toilet paper, towels, and soap;
  - e. doors to allow for individual privacy;
  - f. external emergency release mechanism;
  - g. safe and adequate supply of cold running water; and
  - h. functional toilets, wash basins, and other plumbing or sanitary facilities which shall be maintained in good operating condition and kept free of any materials that might clog or otherwise impair their operation.
- 2. Administrative and Counseling Space
  - a. Administrative office(s) for records, secretarial work and bookkeeping shall be separate and secure from patient areas.
  - b. Space shall be designated to allow for private discussions and counseling sessions.
- 3. Doors and Windows. Outside doors, windows and other features of the structure necessary for the safety and comfort of patients shall be secured for safety within 24

hours after they are found to be in a state of disrepair. Total repair should be completed as soon as possible.

4. Storage. The facility shall:

- a. ensure that there are sufficient and appropriate storage facilities; and
- b. secure all potentially harmful materials.

F. Exits

- 1. Exit doors and routes shall be lighted and unobstructed at all times.
- 2. There shall be an illuminated "EXIT" sign over each exit. Where the exit is not visible, there shall be an illuminated "EXIT" sign with an arrow pointing the way.
- 3. Rooms for 50 or more people shall have exit doors that swing out.
- 4. No door may require a key for emergency exit.
- 5. Windows shall provide a secondary means of escape.
- 6. Every building shall have at least two exits that are well separated.
- 7. Every multiple-story building shall have at least two fire escapes (not ladders) on each story that are well separated. Fire escapes shall:
  - a. be made of non-combustible material;
  - b. have sturdy handrails or walls on both sides; and
  - c. provide a safe route to the ground.
- 8. Stairs and ramps shall be permanent and have non-slip surfaces.
- 9. Exit routes higher than 30 inches (such as stairs, ramps, balconies, landings, and porches) shall have full-length side guards.

G. Electrical Systems. All electrical equipment, wiring, switches, sockets and outlets shall be maintained in good order and safe operating condition. All rooms, corridors, stairways and exits within a facility shall be sufficiently illuminated.

- 1. The facility shall have adequate lighting to provide a safe environment and meet user needs.
- 2. Lighting shall be provided outside the building and in parking lots.
- 3. Light bulbs shall have shades, wire guards or other shields.
- 4. Emergency lighting shall illuminate EXIT routes.

H. Ventilation

- 1. The facility shall not use open flame heating equipment, floor furnaces, unvented space heaters, or portable heating units.
- 2. Occupied parts of the building shall be air conditioned and the temperature should remain between 65°F and 85°F.
- 3. The entire facility shall be adequately ventilated with fresh air. Windows used for ventilation shall be screened.
- 4. The facility shall take all reasonable precautions to ensure that heating elements, including exposed hot water pipes, are insulated and installed in a manner that ensures the safety of patients and staff.

I. Plumbing. The plumbing systems shall be designed, installed, operated and maintained in a manner that ensures an adequate and safe supply of water for all required facility operations and to facilitate the complete and safe removal of all storm water and waste water.

J. Finishes and Surfaces



1. Lead-based paint or materials containing asbestos shall not be used.

2. Floor coverings must promote cleanliness, must not present unusual problems for the handicapped and have flame-spread and smoke development ratings appropriate to the use area (e.g. patient's room versus exit corridor).

3. All variances in floors shall be easily identified by markings, etc. to prevent falls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

### **Subchapter C. Personnel**

#### **§8439. General Provisions**

##### **A. Administration**

1. The administrative staff shall be qualified and adequate to assure adherence to all licensing standards.

2. Qualifications of all facility staff shall meet or exceed those required by federal regulations.

3. Facility compliance with licensing standards shall determine adequacy of available administrative oversight.

4. Facilities shall be organized so that administrative personnel do not perform any clinical duties and/or make clinical decisions, unless the individual is licensed or certified to make clinical decisions.

##### **B. Referrals, Credentials, and Contract Services**

1. Facility personnel shall report referral violations of laws, rules, and professional and ethical codes of conduct to HSS and to appropriate licensing boards when applicable. The facility shall maintain records and have written policies governing staff conduct and reporting procedures that comply with this requirement.

2. The facility administrator is responsible for assuring that all credentials are from accredited institutions, are legal, and have been verified to deter the fraudulent use of credentials.

3. The facility must have formal written agreements with outside professionals or other entities retained to provide contract services. Both parties shall document the annual review of each agreement.

C. Staffing Criteria. Each facility shall develop and implement staffing level criteria to assure compliance with all licensing standards and to provide quality care within the established parameters of current standards of practice.

1. Consideration for determination of adequate nursing staffing levels will include:

- a. acuity of patients;
- b. physical design of facility;
- c. equipment design and complexity;
- d. knowledge, experience, and ability of staff; and
- e. additional pertinent information as needed.

2. A registered nurse or physician shall be present during and after treatment and until the last patient has left the facility.

3. Any experience used to qualify for any position must be counted by using one year of experience equals 12 months of full-time work.

4. A person may hold more than one position within the facility if that person is qualified to function in both capacities, and the required hours for each job are separate and apart for each position.

5. Social work staffing shall be based on the staffing guidelines developed by the Council of Nephrology Social Workers (using 30 percent as a minimum) which addresses the following:

- a. treatment setting;
- b. number of patients seen or anticipated to be seen in a year;
- c. their psychological risk (acuity); and
- d. the number of mutually agreed upon social work functions, including, but not limited to:
  - i. psycho-social evaluations;
  - ii. casework counseling;
  - iii. group work;
  - iv. information and referral;
  - v. facilitating community agency referral;
  - vi. team care planning and collaboration;
  - vii. transfer planning;
  - viii. pre-admission planning;
  - ix. discharge planning
  - x. facilitating use of hospital and/or facility services
  - xi. patient/family education;
  - xii. financial assistance;
  - xiii. staff consultation; and
  - xiv. community health services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

#### **§8441. Training**

A. Each employee shall complete at least eight hours of orientation prior to providing direct patient care/contact. The content of the basic orientation provided to all employees at the time of employment/annual review shall include:

1. policies/procedures and objectives of the facility;
2. duties and responsibilities of the employee;
3. organizational/reporting relationships;
4. ethics and confidentiality;
5. patient's rights;
6. standards of conduct required by the facility;
7. information on the disease process and expected outcomes;
8. emergency procedures including the disaster plan and evacuation procedures;
9. principals and practices of maintaining a clean, healthy and safe environment;
10. specific information as appropriate to the employee's job duties;
11. universal precautions;
12. violent behavior in the workplace;
13. abuse/neglect and exploitation;
14. overview of ESRD licensing standards; and
15. basic emergency care of ill or injured persons until trained personnel can arrive.

B. In-service training is an educational offering that shall assist the direct care/contact workers in providing current treatment modalities, and serve as refresher for subjects covered in orientation. Documentation of attendance for at least three in-services per quarter is required. Additional educational programs are encouraged.

C. Patient Care Technician (PCT) or Dialysis Technician. Training and orientation shall reflect the American Nephrology Nurses Association (ANNA) standards of clinical practice and in compliance with CMS regulations, including but not limited to:

1. anatomy and physiology of the renal system;
2. principles of water treatment;
3. dialyzer reprocessing;
4. basics of nutrition in renal failure;
5. understanding of ethical issues impacting on nephrology practice;
6. communication and interpersonal skills;
7. standard precautions, as recommended by the Center for Disease Control;
8. concepts and principles of hemodialysis;
9. arteriovenous puncture for dialysis access techniques;
10. use of heparin in dialysis procedures;
11. use of isotonic saline in dialysis;
12. maintenance of the delivery system:
  - a. integrity of extra corporeal circuit;
  - b. pressure monitor readings;
  - c. anticoagulant delivery;
  - d. blood flow rate;
  - e. alarm limits and/or conditions;
13. observation and reports of complications to the registered nurse;
14. post-treatment access care guidelines;
15. disposal of supplies in compliance with standard precautions; and
16. agency policy regarding the cleaning of equipment and treatment area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

#### **§8443. Personnel Qualifications and Responsibilities**

##### **A. Chief Executive Officer or Administrator**

1. Qualifications are as cited in the CFR and designated in writing by the governing body.
2. Responsibilities include:
  - a. enforcement of local, federal and state requirements;
  - b. overall management of the facility;
  - c. annual documented review and appropriate actions taken on all policies, procedures, facility rules, goals, grievances, budget, internal and external evaluations (including all survey findings);
  - d. implementation and enforcement of codes of conduct to ensure professional, ethical and legal operations; and
  - e. implementation and enforcement of facility practices that ensure that employees have the necessary administrative support to provide therapeutic milieu for patients (including adequate staff, supplies, and other support).

##### **B. Clinical Nursing Supervisor**

1. Qualifications:
  - a. currently licensed as a registered nurse in the state of Louisiana;
  - b. eighteen months or more of clinical experience as a registered nurse; and

- c. six months or more of clinical experience which must include: nursing care of a patient with permanent kidney failure or who is undergoing kidney transplantation, including training in and experience with the dialysis process.

##### **2. Responsibilities include:**

- a. supervising the clinical nursing functions of the facility;
- b. performing the liaison duties between others, including facility administrative staff, physicians and patients;
- c. supervising the training and performance of the technicians and non-medical staff in order to ensure safe care;
- d. functioning as a patient advocate; and
- e. accepting responsibility and accountability for the assessment, planning, intervention, teaching, supervision, and evaluation of care to ensure that the patient receives safe and effective dialysis treatment according to the prescribed treatment plan and in accordance with LAC 46:XLVII.3901-3913.

##### **C. Charge Nurse**

##### **1. Qualifications:**

- a. currently licensed as registered nurse in the state of Louisiana;
- b. six months or more of clinical experience as a registered nurse; and
- c. three months or more of the clinical experience must include nursing care of a patient with permanent kidney failure or who is undergoing kidney transplantation, including training in and experience with the dialysis process.

##### **2. Responsibilities include:**

- a. accepting responsibility and accountability for the assessment, planning, intervention, teaching, supervision, and evaluation of care to ensure that the patient will receive safe and effective dialysis treatment according to the prescribed treatment plan and in accordance with LAC 46: XLVII.3901-3913;
- b. performing initial verification and biannual validation of cannulating skills of dialysis technicians and LPN's;
- c. providing supervision and assistance as needed to RN's, LPN's and dialysis technicians; and
- d. being on site and available in the treatment area to provide patient care during all dialysis treatments.

##### **D. Registered Nurse**

1. Qualifications. Possession of a current valid license or be an RN applicant with a temporary permit to practice in Louisiana.

##### **2. Responsibilities include:**

- a. accepting responsibility and accountability for the assessment, planning, intervention, teaching, supervision, and evaluation of care to ensure that the patient will receive safe and effective dialysis treatment according to the prescribed treatment plan and in accordance with LAC 46:XLVII.3901-3913;
- b. conducting admission nursing assessments with each visit prior to delegating any task other than collection of data (vital signs only);
- c. reassessing patients as needed to determine a change in the patient's status or at the patient's request;

d. participating in the team review of a patient's progress;

e. recommending changes in treatment based on the patient's current needs;

f. providing oversight and direction to dialysis technicians and LPN's; and

g. participating in continuous quality improvement activities.

3. Registered nurses may perform the duties of the nursing positions cited above for which they are qualified and designated.

#### E. Dietitian/Nutritionist

1. Qualifications. Possession of a currently valid license with the Louisiana Board of Dietitians/Nutritionists.

2. Responsibilities include:

a. those duties defined in R.S. 37:3081-3094;

b. providing in-service and staff training, consultation to professionals and paraprofessionals, and direct supervision as needed to improve the overall quality of care being provided;

c. conducting individual and/or group didactic and counseling interaction with patients as needed to achieve compliance with dietary restrictions;

d. documenting direct communication with other dietitians who may be involved in the patient's care, such as dietitians at the nursing home, assisted living, etc;

e. providing continuous learning opportunities for patients and/or care givers, including regionally appropriate recipes when possible; and

f. providing adequate knowledge to staff to reinforce patient education.

#### F. Social Worker

1. Qualifications. Currently licensed by the Louisiana State Board of Social Work Examiners as a Licensed Clinical Social Worker.

2. Responsibilities include those duties defined in R.S. 37:2701-2723 including, but not limited to:

a. Assessment, identification and evaluation of an individual's strengths, weaknesses, problems, and needs for the development of the treatment plan.

b. Case Management function in which services, agencies, resources, or people are brought together within a planned framework of action directed toward the achievement of established goals. It may involve liaison activities and collateral contracts with other facilities.

c. Patient Education function in which information is provided to individuals and groups concerning the disease process and treatment, positive lifestyle changes, and available services and resources. Facility orientation may be included with information given regarding rules governing patient conduct and infractions that can lead to disciplinary action or discharge from the facility, availability of services, costs, and patient's rights.

d. Counseling (Individual/Group) services to provide appropriate support to the patient and/or family to assist individuals, families, or groups in achieving objectives through:

i. exploration of a problem and its ramifications;

ii. examination of attitudes and feelings;

iii. consideration of alternative solutions; and

iv. decision making and problem solving.

e. Referral, assisting patient and/or family to optimally utilize the available support systems and community resources.

f. Treatment Planning function in which all disciplines and the patient:

i. identify and rank problems needing resolution;

ii. establish agreed upon immediate objectives and long-term goals; and

iii. decide on a treatment process, frequency, and the resources to be utilized.

G Medical Director. Every facility shall have a designated medical director.

1. Qualifications

a. the medical director shall have a current, valid license to practice medicine in Louisiana;

b. be board certified in Internal Medicine or Pediatrics, or board eligible, or board certified in Nephrology;

c. have completed an accredited Nephrology training program;

d. have at least 12 months of experience or training in the care of patients at ESRD facilities; and

e. exception: in emergency situations, such as, isolated rural areas, natural disasters, or the death of the qualified director, DHH may approve the interim appointment (for a limited time period) of a licensed physician who does not meet the above criteria.

2. Responsibilities include:

a. providing services as required by the facility to meet the standards;

b. providing oversight to ensure that the facility's policies/procedures and staff conform with the current standards of medical practice;

c. performing liaison duties between others, including facility staff, physicians, and patients;

d. ensuring that each patient at the facility receives medical care and supervision appropriate to his/her needs; and

e. ensuring that each patient is under the care of a physician who sees the patient once every two weeks (staff-assisted dialysis patients) and at least every three months for home patients.

#### H. Patient Care Technician (PCT) or Dialysis Technician

1. Qualifications include dialysis training as specified in §8441.C.

2. Responsibilities include:

a. performing patient care duties only under the direct and on-site supervision of qualified registered nurses;

b. performing only those patient care duties that are approved by facility management and included in the policy and procedure manual; and

c. performing only those patient care duties for which they have been trained and are documented as competent to perform.

#### I. Reuse Technician

1. Qualifications. Basic general education (high school or equivalent), facility orientation program, and completion of education and training to include the following:

a. health and safety training, including universal precautions;

- b. principles of reprocessing, including dangers to the patient;
- c. procedures of reprocessing, including pre-cleaning, processing, storage, transporting, and delivery;
- d. maintenance and safe use of equipment, supplies, and machines;
- e. general principles of hemodialysis and in-depth information on dialyzer processing; and
- f. competency certification on a biannual basis by a designated facility employee.

2. Responsibilities. The reuse technician is responsible for the transport, cleaning, processing, and storage of dialyzers to limit the possibility of cross contamination, and to avoid improper care of multiple use dialyzers.

3. Any technician or professional staff who performs reprocessing shall have documented training in the procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

**Subchapter D. Patient Care**

**§8455. Patient's Rights and Responsibilities**

A. Facilities are required to develop, post, and implement rules and policies that protect the rights of patients and encourage patient responsibility.

1. A committee (staff, patients, and/or family) should develop the rules of the specific facility that relate to patient comfort, safety, and the consequences of failing to abide by the rules.

2. Facility staff and patients must follow the rules, and if the rule is no longer applicable, then a committee review should eliminate or alter the rule and notify all concerned.

B. Patient's Rights. Each facility shall develop and implement policies that protect the rights of their patients including, but not limited to, the right to:

- 1. be fully informed of rights, responsibilities and all rules governing conduct related to patient care and services;
- 2. be fully educated and supported concerning their illness;
- 3. adequate, safe and efficient dialysis treatment;
- 4. protection from unsafe and/or unskilled care by any person associated with the facility;
- 5. protection from unqualified persons providing services under the auspices of treatment;
- 6. consideration and respect toward the patient, family and visitors;
- 7. timely resolution of problems or grievances without threat or fear of staff intimidation or retaliation;
- 8. protection of personal property approved for use by the facility; and
- 9. protection from retaliation for the exercise of individual rights.

C. Patient Responsibilities. The patient is responsible for cooperating and participating to the best of their ability in the following activities:

- 1. planning and implementing treatment;
- 2. dietary restrictions;
- 3. scheduling of treatments;
- 4. providing information to assist those providing care;

5. protecting the comfort, health and safety of all patients;

6. resolution of problems as they arise; and

7. reporting (to appropriate authorities) situations that endanger themselves or others.

D. Grievance Procedure. The facility must have a grievance process and must indicate who the patient can contact to express a grievance. Records of all grievances, steps taken to investigate them, and results of interventions must be available to surveyors upon request. It is recommended that the facility appoint a grievance committee with patient representation to resolve major or serious grievances.

**E. Abuse, Neglect, and Exploitation**

1. All allegations of patient abuse, neglect, and exploitation shall be reported either verbally or by facsimile within 24 hours and confirmed in writing to HSS within seven days.

2. The facility is responsible for taking necessary action to protect patients from an employee accused of abuse, neglect, or exploitation, for referring any licensed personnel to their respective professional boards, and/or contacting local authorities for investigation when indicated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

**§8457. Treatment Services**

A. The following services shall be provided by a facility.

1. Hemodialysis Ca method of dialysis in which blood from a patient's body is circulated through an external device or machine and then returned to the patient's bloodstream.

2. Peritoneal Dialysis Ca procedure that introduces dialysate into the abdominal cavity to remove waste products through the peritoneum (a membrane which surrounds the intestines and other organs in the abdominal cavity).

3. Home Training C home visits, teaching, and professional guidance to teach patients to provide self-dialysis.

4. Home Support C provision of professional support to assist the patient who is performing self-dialysis.

B. Dialyzer Reprocessing. Reuse shall meet the requirements of 42 CFR §405.2150. Additionally, the facility shall:

1. develop, implement, and enforce procedures that eliminate or reduce the risk of patient care errors, including but not limited to, a patient receiving another patient's dialyzer, or a dialyzer that has failed performance checks;

2. develop procedures to communicate with staff and to respond immediately to market warnings, alerts, and recalls;

3. develop and utilize education programs that meet the needs of the patient and/or family members to make informed reuse decisions; and

4. be responsible for all facets of reprocessing, even if the facility participates in a centralized reprocessing program.

C. Water treatment shall be in accordance with the *American National Standard, Hemodialysis Systems* published by the Association for the Advancement of

Medical Instrumentation (AAMI Standards) and adopted by reference 42 CFR. § 405.2140.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

#### **§8459. Treatment Requirements**

##### **A. Admission**

1. Each facility shall develop and implement written criteria to apply when any patient is referred for dialysis treatment or seeks admission, to include:

- a. payment guidelines, and alternate resources;
  - b. exceptions to apply when the patient would have to travel great distances, or suffer undue hardship to be treated at another facility; and
  - c. consideration of the patient's health and welfare.
2. Each facility shall develop a process that includes:
- a. perpetual logging of applicants to assure that all patients are treated equally and offered equal access;
  - b. referral to appropriate facilities or outside resources;
  - c. contracts with those patients who have a history of problems at other facilities; and
  - d. professional interaction with other facilities when a patient has financial or behavior problems that cannot be resolved.

##### **B. Discharge/Transfer**

1. Each facility shall develop and implement written criteria to apply when a patient is discharged without consent to include:

- a. reason for discharge (such as, non-compliance or illegal behavior);
- b. progressive procedures to assist the patient in making improvements;
- c. assistance to aid the patient in finding a new facility; and
- e. evaluation of each situation to improve outcomes.

2. A written, patient specific discharge process plan shall be accessible that provides reasonable protection and continuity of services.

##### **C. Patient Care Miscellaneous**

1. Each patient who does not meet recommended levels of adequacy of treatment shall be considered an unstable patient, with monthly care plan revisions to attain the desired outcome.

2. Patients must be informed whenever there is an error or incident that exposes them to an infectious illness or the potential for death or serious illness.

3. Facility staff should inform patients of current changes in the dialysis field when those changes could positively or negatively affect the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

#### **§8461. Patient Records**

A. The facility is required to maintain a clinical record according to current professional standards for each patient.

1. This record shall:

- a. contain all pertinent past and current medical, psychological, social and other therapeutic information, including the treatment plan;
- b. be protected from unauthorized persons, loss, and destruction; and
- c. be a central location for all pertinent patient information and be easily accessible to staff providing care.

2. Patient records can be copied and/or transferred from one facility to another provided that the patient signs the authorization for transfer of the records and provided that confidentiality of information is strictly enforced.

3. Patient records shall be maintained at the facility where the patient is currently active and for six months after discharge. Records may then be transferred to a centralized location for maintenance in accordance with standard practice and state and federal laws.

4. Confidentiality. Records shall:

- a. be inaccessible to anyone not trained in confidentiality, unless they are granted access by legal authority such as surveyors, investigators, etc.; and
- b. not be shared with any other entity unless approved in writing by the patient, except in medical emergencies.

5. Record Keeping Responsibility. A person who meets or exceeds the federal requirements, shall be designated as responsible for the patient records.

6. Contents. Patient records shall accurately document all treatment provided and the patient's response in accordance with professional standards of practice. The minimum requirements are as follows:

- a. admission and referral information, including the plan/prescription for treatment;
- b. patient information/data - name, race, sex, birth date, address, telephone number, social security number, school/employer, and next of kin/emergency contact;
- c. medical limitations, such as major illnesses and allergies;
- d. physician's orders;
- e. psycho-social history/evaluation; and
- f. treatment plan. The plan is a written list of the patient's problems and needs based on admission information and updated as indicated by progress or lack of progress. Additionally, the plan shall:
  - i. contain long and short term goals;
  - ii. be reviewed and revised as required, or more frequently as indicated by patient needs;
  - iii. contain patient-specific, measurable goals that are clearly stated in behavioral terms;
  - iv. contain realistic and specific expected achievement dates;
  - v. indicate how the facility will provide strategies/activities to help the patient achieve the goals;

- vi. be followed consistently by all staff members; and
- vii. contain complete, pertinent information related to the mental, physical, and social needs of the patient.
- g. diagnostic laboratory and other pertinent information, when indicated;
- h. progress notes by all disciplines; and
- i. other pertinent information related to the individual patient as appropriate.

7. Computer data storage of pertinent medical information must:

- a. meet the above criteria;
- b. be easily retrievable and accessible when the patient is receiving dialysis; and
- c. be utilized by care givers during dialysis treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Tuesday, May 28, 2002 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Minimum Licensing Standards  
End Stage Renal Disease Treatment Facilities**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that \$2,000 (\$1,000 SGF and \$1,000 FED) will be expended in SFY 2001-02 for the states administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that implementation of this proposed rule will increase self generated funds by approximately \$87,750 as a result of the collection of annual fees from the licensing of end stage renal disease treatment facilities. Additionally, it is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$131,626 for SFY 2002-03, \$131,626 for SFY 2003-04, and \$131,626 for SFY 2004-05.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

It is anticipated that the implementation of this proposed rule will increase self generated funds and federal revenue collections by approximately \$219,376 for SFY 2002-03,

\$219,376 for SFY 2003-04, and \$219,376 for SFY 2004-05 from the licensing of approximately 130 end stage renal disease treatment facilities at a cost of approximately \$675 for each facility. The funds generated from licensing activities will be used for administrative expenses by the Department of Health and Hospitals, Health Standards Section. This proposed rule will protect the health and well being of patients of end stage renal disease treatment facilities by ensuring proper licensing standards for participating providers of these medically necessary services.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0204#060

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

Regulation 70C Replacement of Life  
Insurance and Annuities  
(LAC 37:XIII.8903, 8907, 8909, and 8917)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Insurance gives notice that it intends to amend its existing Regulation 70 relating to the replacement of life insurance and annuities. This intended action complies with the statutory law administered by the Department of Insurance.

The proposed amendments are needed to facilitate certain changes deemed necessary to allow for insurance transactions completed by electronic means. The proposed amendments affect the following sections: §§8903, 8907, 8909 and 8917.

**Title 37  
INSURANCE**

**Part XIII. Regulations**

**Chapter 89. Regulation 70C Replacement of Life Insurance and Annuities**

**§8903. Definitions**

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*Electronic Means* relating to sales presentations conducted by a producer utilizing technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities where all signatures are obtained via electronic signature technology.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:1300 (June 2000), amended LR 28:

**§8907. Duties of Producers**

A.1. - 2. ...

3. Notwithstanding Paragraph A.2 above, when the sales presentation is conducted by electronic means and all signatures are obtained via electronic signature technology, the meaning of "at the time of taking the application" shall be extended to allow for the Producer's submission of

electronic information to the company. The requirements of Paragraph A.2 are deemed met when a copy of the required replacement notice electronically signed at the presentation is mailed to the client within two business days following submission of the case to the company. In no event shall the time for mailing the notice exceed five business days from the date the client signed the application.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:1301 (June 2000), amended LR 28:

#### **§8909. Duties of Insurers that Use Producers**

A. - C.2.b. ...

c. mail the client a hard copy of the required replacement notice within two business days following a producer's submission of case conducted by electronic means. In order to show compliance with §8907.A.2 and 3, the mailing must occur no later than five business days from the date of client's signing the application.

C.3. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:1302 (June 2000), amended LR 28:

#### **§8917. Violations and Penalties**

A. Any failure to comply with this Regulation shall be considered a violation of R.S. 22:1214. Examples of violations include:

1. - 5. ...

6. the company's failure to mail the client a hard copy of the required replacement notice within two business days following the submission of a case conducted by electronic means. All such mailings must occur no later than five business days from the date of client's signing the application.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:644.1

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 26:1304 (June 2000), amended LR 28:

#### **Family Impact Statement**

1. Describe the effect of the proposed rule on the stability of the family. The proposed amendments to Regulation 70 should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed rule on the authority and rights of parents regarding the education and supervision of their children. The proposed amendments to Regulation 70 should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the effect of the proposed rule on the functioning of the family. The proposed amendments to Regulation 70 should have no impact on the functioning of the family.

4. Describe the effect of the proposed rule on family earnings and budget. The proposed amendments to Regulation 70 should have no impact on the functioning of the family.

5. Describe the effect of the proposed rule on the behavior and responsibility of children. The proposed amendments to Regulation 70 should have no impact on the behavior and responsibility of children.

6. Describe the effect of the proposed rule on the ability of the family or a local government to perform the function as contained in the rule. The proposed amendments to Regulation 70 should have no impact on the ability of the family or a local government to perform the function as contained in the rule.

On May 28, 2002, at 10 a.m., the Department of Insurance will hold a public hearing in the Plaza Hearing Room of the Insurance Building located at 950 N. 5th Street, Baton Rouge, Louisiana, 70804 to discuss the proposed amendments.

Persons interested in obtaining copies of the Rule or in making comments relative to these proposals may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business at 4:30 p.m., May 29, 2002.

J. Robert Wooley  
Acting Commissioner

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Regulation 70C Replacement of Life Insurance and Annuities**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

No implementation costs or savings to state or local governmental units are anticipated as a result of adoption of the proposed amendments to Regulation 70.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Adoption of the proposed amendments to Regulation 70 is not expected to have any impact upon revenue collections by state or local governmental units. No new responsibilities or functions will be required of DOI as a result of adoption of Regulation 70. DOI is already performing all actions set forth in the proposed regulation; therefore, no new or additional revenue will result from adoption of this proposed regulation.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There should be no costs or economic benefits to insurance companies or insurance consumers as a result of the adoption of the proposed amendments to Regulation 70.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed amendments to Regulation 70 are not expected to have any impact on competition and employment.

Chad M. Brown	Robert E. Hosse
Deputy Commissioner	General Government Section Director
Management and Finance	Legislative Fiscal Office
0204#079	

## NOTICE OF INTENT

### Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots

Drug and Alcohol Policy (LAC 46:LXXVI.Chapter 2)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots hereby gives Notice of Intent to promulgate rules regarding its Drug and Alcohol Policy.

In accordance with state law and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any possible imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the Board of Examiners proposes to adopt the following actions pertaining to the rules and regulations of the Board.

The text of this proposed rule may be viewed in its entirety in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments no later than 4:30 p.m. on May 20, 2002 to Robert A. Barnett, Executive Director, 3900 River Road, Suite 5, Jefferson, LA 70121.

Robert A. Barnett  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Drug and Alcohol Policy

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no cost to the Board of New Orleans and Baton Rouge Steamship Pilot commissioners for the Mississippi River, the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, nor the State of Louisiana for this rule change and implementation. All expenses, if any, are paid by the Pilot Association, as per law. All funds paid by the NOBRA Association are generated by the pilot fees paid by shipping concerns and industry members.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule change may result in an increase in costs for those pilots who must retain an attorney for representation in a disciplinary hearing. Also, pilots who are required to undergo evaluation and/or treatment for drug and/or alcohol use shall do so at his/her own expense.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Any NOBRA pilot who presents a positive drug or alcohol test or drug screen shall be subject to disciplinary action by the Board of Review and/or Board of Examiners, including revocation or suspension of the pilot commission by the Office

of the Governor. Penalties may also include fines, reprimands and/or treatment/rehabilitation.

Robert A. Barnett  
Executive Director  
0204#048

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Public Safety and Corrections Board of Parole

Public Hearings/Risk Review Panel Applicants  
(LAC 22:XI.511)

The Louisiana Board of Parole, in accordance with R.S. 49:950 et seq., hereby gives notice of its intent to amend LAC 22:XI.511, Public Hearings. This Rule is being amended to facilitate the handling of favorable recommendations from the Louisiana Risk Review Panel.

#### Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part XI. Board of Parole

#### Chapter 5. Meetings and Hearings of the Board of Parole

#### §511. Public Hearings

A. - F. ...

G. When the Louisiana Board of Parole receives a favorable recommendation from any of the three existing Louisiana Risk Review Panels (South, Central and/or North Louisiana Risk Review Panel), or the Louisiana Board of Pardons regarding a Risk Review Panel recommendation previously submitted to the Board of Pardons, said recommendation shall be accepted and scheduled for a public hearing as soon as possible. A Risk Review Panel recommendation may be set for a hearing at a time and date designated by the vice-chairman, at his/her sole discretion, notwithstanding any rule contained herein to the contrary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended LR 28:

#### Family Impact Statement

In accordance with the Administrative Procedure Act, R.S. 49:953.A.1.a.viii and R.S. 49:972, the Louisiana Board of Parole hereby provides the Family Impact Statement.

Adoption of this amendment to the rules of the Louisiana Board of Parole regarding the handling of applications via the Louisiana Risk Review Panel process will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Interested persons may submit written comments to Fred Y. Clark, Chairman of the Board of Parole, c/o Department of Public Safety and Corrections, 504 Mayflower Street,



Baton Rouge, LA 70802, or by facsimile to (225) 342-3701. All comments must be submitted by 4:30 p.m., May 20, 2002.

Fred Y. Clark  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Public Hearings Risk Review Panel  
Applicants**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no estimated implementation costs or savings. Applications for parole from the Risk Review Panel will be handled in the normal manner. The rule merely clarifies the authority of the Board to set an application for hearing without delay.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no estimated effects on revenue collections for the above stated reasons.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The rule does not impose any additional costs on an applicant for parole. Applications are submitted voluntarily, and the applicant must comply with current rules.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated impact on competition and employment.

Robert B. Barbor  
Executive Counsel  
0204#073

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Gaming Control Board**

Code of Conduct of Licensees (LAC 42:XI.2417)

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42:XI.2417 in accordance with R.S. 27:15 and 24 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 42**

**LOUISIANA GAMING**

**Part XI. Video Poker**

**Chapter 24. Video Draw Poker**

**§2417. Code of Conduct of Licensees**

A. - B.5. ...

6. No licensee shall permit the operation of any video draw poker device at any time the licensed establishment is not open for business.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 27:15 and 24.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Gaming Control Board, LR 27:59 (January 2001), amended LR 28:

**Family Impact Statement**

It is accordingly concluded that adopting LAC 42:XI.2417.B.6 would appear to have a positive yet inestimable impact on the following:

1. the effect on stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the effect on the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed rule.

All interested persons may contact Tom Warner, Attorney General's Gaming Division, telephone (225) 342-2465, and may submit comments relative to these proposed Rules, through May 10, 2002, to 339 Florida Street, Suite 500, Baton Rouge, LA 70801.

Hillary J. Crain  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Code of Conduct of Licensees**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that there will be no direct implementation costs or savings to state or local government units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

No effect on revenue collections is anticipated.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

No costs to directly affected persons are expected.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

No effect on competition or employment is estimated.

Hillary J. Crain  
Chairman  
0204#045

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Gaming Control Board**

Compulsive and Problem Gambling  
(LAC 42:III.118, Chapter 3, VII.2933,  
Chapter 37, IX.2939, Chapter 37,  
XI.2407, XIII.2933, and Chapter 37)

The Louisiana Gaming Control Board hereby gives notice that it intends to adopt LAC 42:III.301 et seq.; repeal LAC 42:III.118, VII.2933, VII.Chapter 37, IX.2939, IX.Chapter 37, XIII.2933, XIII.Chapter 37; and amend XI.2407 in accordance with. R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 42**  
**LOUISIANA GAMING**

**Part III. Gaming Control Board**

**Chapter 1. General Provisions**

**§118. Programs to Address Problem Gambling**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:2256 (November 1999), repealed LR 28:

**Chapter 3. Compulsive and Problem Gambling**

**§301. Problem Gambling Programs**

A. As used in this Section *licensee* shall mean all persons licensed or otherwise authorized to conduct gaming operations pursuant to the provisions of Chapters 4, 5, and 7 of the Louisiana Gaming Control Law, R.S. 27:1 et seq., including the Casino Operator and Casino Manager, but not including persons licensed pursuant to Chapter 6 of the Louisiana Gaming Control Law.

B. The Casino Operator or Casino Manager and each licensee shall post or provide written materials concerning the nature and symptoms of problem gambling in conspicuous places within the gaming establishment in or near gaming areas and areas where cash or credit is made available to patrons, including cash dispensing machines.

C. The Casino Operator or Casino Manager and each licensee shall post one or more signs, as approved by the Division, at points of entry to casino gaming establishments to inform customers of the toll free telephone number available to provide information and referral services regarding compulsive or problem gambling. The toll free number shall be provided by the division.

D. Failure by the Casino Operator or Casino Manager or a licensee to comply with the provisions of Subsections B or C above shall constitute violations of this Section. The penalty for violation of Subsection B or C shall be \$1,000 per day or administrative action including but not limited to suspension or revocation.

E. 1. The Casino Operator or Casino Manager and all licensees shall develop a comprehensive program for its property or properties, that address, at a minimum, the areas of concern described in R.S. 27:27.1.C which are designed to:

a. provide procedures designed to prevent employees from willfully permitting a person identified on a self-exclusion list from engaging in gaming activities at the licensed establishment or facility;

b. provide procedures to offer employee assistance programs or equivalent coverage. The procedures shall be designed to provide confidential assessment and treatment referral for gaming employees and, if covered, their dependents who may have a gambling problem;

c. provide procedures for the development of programs to address issues of underage gambling and unattended minors at gaming facilities;

d. provide procedures for the training of all employees that interact with gaming patrons in gaming areas to report suspected problem gamblers to supervisors who shall be trained as provided in this Paragraph. The training shall, at a minimum, consist of information concerning the nature and symptoms of compulsive and problem gambling behavior and assisting patrons in obtaining information

about compulsive and problem gambling and available options for seeking assistance with such behavior;

e. provide procedures designed to prevent serving alcohol to intoxicated gaming patrons consistent with the provisions of R.S. 26:931 et seq.;

f. provide procedures for removing self-excluded persons from the licensed establishment or facility, including, if necessary, procedures that include obtaining the assistance of the division or local law enforcement;

g. provide procedures preventing any person identified on the self-exclusion list from receiving any advertisement, promotion, or other targeted mailing after ninety days of receiving notice from the board that the person has been placed on the self-exclusion list;

h. provide procedures for the distribution or posting within the gaming establishment of information that promotes public awareness about problem gambling and provides information on available services and resources to those who have a gambling problem;

i. provide procedures for the distribution of responsible gaming materials to employees;

j. provide procedures for the posting of local curfews or laws and prohibitions, if any, regarding underage gambling and unattended minors;

k. provide procedures to prevent any person placed on the self-exclusion list from having access to credit or from receiving complimentary services, check cashing services, and other club benefits;

l. provide procedures designed to prevent persons from gaming after having been determined to be intoxicated for the purposes of R.S. 27:27.1.C.(5).

2. The Casino Operator or Casino Manager and each licensee shall designate personnel responsible for implementing and monitoring the program.

3. In addition to the areas of concern described in R.S. 27:27.1.C, the comprehensive program shall also include a program that allows patrons to self-limit their access to functions and amenities of the gaming establishment, including but not limited to, the issuance of credit, check cashing or direct mail marketing. The program shall contain, at a minimum, the following:

a. the development of written materials, including forms used by the division, for dissemination to patrons explaining the program;

b. the development of procedures and written material, including forms used by the division, for dissemination to patrons explaining the excluded persons provisions of R.S. 27:1 et seq. and the administrative rules of the board;

c. the development of procedures and written forms allowing patrons to participate in the program;

d. standards and procedures that allow a patron to be removed from the licensee's direct mailing and other direct marketing regarding gaming opportunities at the licensee's location.

F. The Casino Operator or Casino Manager and each licensee shall submit the comprehensive program to the board for approval within one hundred twenty days from the date this rule becomes effective as required by R.S. 27:27.1.C.

G. Upon approval, the Casino Operator, Casino Manager and all casino gaming licensees shall comply with their

respective comprehensive compulsive and problem gambling programs submitted to the board.

#### H. Sanctions

1. Failure by any licensee, the Casino Operator or Casino Manager to comply with LAC 42:III.301.F shall constitute a violation. The penalty for violation of LAC 42:III.301.F shall be \$1,000 per day or administrative action including but not limited to suspension or revocation.

2. Failure by any licensee, the Casino Operator or Casino Manager to comply with any provision of the programs approved by the board shall constitute a violation of LAC 42:III.301.G. The penalty shall be \$5000 for the first offense, \$10,000 for the second offense and \$20,000 for the third offense. The penalty for fourth and subsequent offenses shall be \$20,000 or administrative action including but not limited to suspension or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 28:

### §302. Problem Gambling Programs; Video Draw

#### Poker

A. As used in this Section, licensee shall mean all persons licensed or otherwise authorized to conduct gaming operations pursuant to the provisions of the Video Draw Poker Devices Control Law as provided in Chapter 6 of the Louisiana Gaming Control Law.

B. Each licensee shall post or provide written materials concerning the nature and symptoms of problem gambling in conspicuous places in or near gaming areas and areas where cash or credit is made available to patrons, including cash dispensing machines.

C. Each licensee shall post one or more signs at points of entry to the gaming area to inform customers of the toll free telephone number available to provide information and referral services regarding compulsive or problem gambling. The toll free number shall be provided by the division.

D. Licensed video draw poker establishments shall comply with procedures and training requirements developed by the division and approved by the board.

E. Failure by a licensee to comply with the provisions of Subsections B, C or D above shall constitute violations of this Section. The penalty for violation of this Section shall be \$250 per day for the first offense, \$500 per day for the second offense and \$1000 per day for the third offense. The penalty for fourth and subsequent offenses shall be \$1000 per day or administrative action including but not limited to suspension or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 28:

### §303. Persons Required to be Excluded

A. Pursuant to R.S. 27:27.2, the Louisiana Gaming Control Board hereby provides for the establishment of a list of persons who are to be excluded or ejected from any room, premises, or designated gaming area of an establishment where gaming is conducted pursuant to Chapters 4, 5, and 7 of the Louisiana Gaming Control Law, R.S. 27:1 et seq.

B. Definitions. The following words and terms, when used in this Section, shall have the following meanings unless the context clearly indicates otherwise.

**Board Exclusion List** A list of names of persons who, pursuant to R.S. 27:27.2, are required to be excluded or ejected from casino gaming establishments.

**Board Excluded Person** Any person who has been placed on the board exclusion list by preliminary or final order of the board or division where applicable, and who is required to be excluded or ejected from a casino gaming establishment pursuant to the Louisiana Gaming Control Law.

**Candidate** Any person whose name is included in a petition to place such person on the board exclusion list pursuant to the Louisiana Gaming Control Law.

**Career or Professional Offender** Any person who, in an occupational manner or context, engages in methods and activities that are deemed criminal violations or contrary to the public policy of this state for the purpose of economic gain.

**Casino Gaming Establishment** Any room, premises, or designated gaming area of any establishment where gaming is conducted pursuant to Chapters 4, 5, and 7 of the Louisiana Gaming Control Law.

**Cheat** Any person whose act or acts in any jurisdiction would constitute any offense under R.S. 14:67.18.

**Occupational Manner or Context** The systematic planning, administration, management, or execution of an activity for financial gain.

#### C. Criteria for Exclusion

1. The board exclusion list may include any person who meets any of the following criteria:

a. a career or professional offender whose presence in a casino gaming establishment would be adverse to the interests of the state of Louisiana or to authorized gaming therein;

b. an associate of a career or professional offender whose association is such that his or her presence in a casino gaming establishment would be adverse to the interests of the state of Louisiana or to authorized gaming therein;

c. a person who has been convicted of a gaming or gambling crime or a crime related to the integrity of gaming operations;

d. a person who has performed any act or has a notorious or unsavory reputation that would adversely affect public confidence and trust in gaming, including, but not limited to, being identified with criminal activities in published reports of various federal and state legislative and executive bodies that have inquired into criminal activities. Such bodies shall include, but not be limited to, the following:

i. California Crime Commission;

ii. Chicago Crime Commission;

iii. McClellan Committee (Senate Subcommittee on Investigation);

iv. New York Waterfront Commission;

v. Pennsylvania Crime Commission Report;

vi. Senate Permanent Subcommittee on Investigations;

vii. State of Colorado Organized Crime Strike Force; or

viii. President's Commission on Organized Crime;

e. has been named or is currently on any valid exclusion list of any other jurisdiction;

f. is a person whose presence in a casino gaming establishment would be adverse to the state of Louisiana or authorized gaming therein, including, but not limited to:

- i. cheats;
- ii. persons whose gaming privileges, permits, licenses, or other approvals have been suspended, revoked or denied;
- iii. persons who pose a threat to the safety of the patrons or employees of the Casino Operator or Casino Manager or any casino gaming licensee;
- iv. persons with a documented history of conduct involving the disruption of the gaming operations in any jurisdiction;
- v. persons subject to an order of a Louisiana court excluding such persons from any casino gaming establishments; or
- vi. persons with pending charges for a gaming or gambling crime or a crime related to the integrity of gaming operations;

g. for purposes of Subsection C.1 above:

i. a person's presence may be considered "adverse to the interest of the state of Louisiana or to authorized gaming therein" if known attributes of such person's character and background:

(a). are incompatible with the maintenance of public confidence and trust in the credibility, integrity and stability of licensed gaming;

(b). could reasonably be expected to impair the public perception of, and confidence in, the strict regulation of gaming activities; or

(c). would create or enhance a risk or appearance of unsuitable, unfair or illegal practices, methods or activities in the conduct of gaming or in the business or financial arrangements incidental thereto;

ii. a finding that a person's presence is "adverse to the interest of the state of Louisiana or to authorized gaming therein" may be based upon, but not limited to, the following:

(a). the nature and notoriety of the attributes of character or background of the person;

(b). the history and nature of the involvement of the person with authorized gaming in Louisiana or any other jurisdiction, or with any particular licensee or licensees or any related company thereof;

(c). the nature and frequency of any contacts or associations of the person with any licensee or licensees, or with any employees or agents thereof; or

(d). any other factor reasonably related to the maintenance of public confidence in the efficacy of the regulatory process and the integrity of gaming operations, the gaming industry, and its employees;

iii. race, color, creed, national origin or ancestry, sex or disability as defined in R.S. 51:2234.(11), shall not be a reason for placing the name of any person upon such list.

## 2. Duties of the Division

a. The division shall, on its own initiative, or upon recommendation by the board, investigate any individual who would appear to be an appropriate candidate for placement on the board exclusion list.

b. If, upon completion of an investigation, the division determines that an individual should be placed on the board exclusion list, the division shall make a recommendation for exclusion to the board, identifying the candidate and setting forth the basis for which the division believes the candidate satisfies the criteria for exclusion established by the Louisiana Gaming Control Law.

## 3. Notice

a. Upon a determination by the board that one or more of the criteria for being named on the list are satisfied, such person shall be placed on the board exclusion list. The board or division shall serve notice of exclusion in the matter prescribed in R.S. 27:27.2.C. The notice shall:

i. identify the excluded person by name, including known aliases, and last known address;

ii. specify the nature and scope of the circumstances or reasons for such person's exclusion;

iii. inform the excluded person of his right to request a hearing for review and/or removal;

iv. inform the excluded person that the failure to timely request a hearing shall result in the decision's becoming final.

## 4. Contents of the Board Exclusion List

a. The following information shall be provided for each board excluded person:

i. the full name of the person and any known aliases the person is believed to have used;

ii. a description of the person's physical appearance, including height, weight, build, color of hair and eyes, and any other physical or distinguishing characteristics that may assist in identifying the person;

iii. the date of birth of the person;

iv. the date of the notice mandating exclusion;

v. the driver's license number or state identification number of the person;

vi. a photograph of the person, if available and the date taken;

vii. the person's occupation and his current home and business address; and

viii. social security number, if available;

ix. the reason for exclusion.

## 5. Maintenance and Distribution of the List

a. The board shall maintain a list of persons to be excluded or ejected from all casino gaming establishments.

b. The list shall be open to public inspection except information pertaining to the date of birth, driver's license number and current home and business address of the board excluded person.

c. The list shall be distributed by the division to the Casino Operator or Casino Manager and all casino gaming licensees.

d. No casino gaming licensee, the Casino Operator or Casino Manager or any employee, or agent thereof shall disclose the date of birth or current home or business address of a board excluded person to anyone other than employees or agents of casino gaming licensees whose duties and functions require access to such information.

6. Duties of the Casino Operator or Casino Manager and Casino Gaming Licensees

a. The Casino Operator or Casino Manager, casino gaming licensees and their agents or employees shall exclude or eject the following persons from the casino gaming establishment:

i. any board excluded person; or

ii. any person known to the Casino Operator or Casino Manager or any casino gaming licensee to satisfy the criteria for exclusion in the Louisiana Gaming Control Law.

b. If a board excluded person enters, attempts to enter, or is in the casino gaming establishment and is discovered by the Casino Operator or Casino Manager or any casino gaming licensee, the Casino Operator or Casino Manager or casino gaming licensee shall immediately notify the division of such fact and, unless otherwise directed by the division, immediately eject such excluded person from the casino gaming establishment.

c. Upon discovery of a board excluded person in the casino gaming establishment, both the security and surveillance departments of the Casino Operator, Casino Manager and casino gaming licensees shall initiate a joint investigation, unless otherwise directed by the division, to determine:

i. responsibility of employees of the casino gaming establishment for allowing a board excluded person to gain access to the casino gaming establishment; and

ii. the net amount of winnings and/or losses attributable to the board excluded person.

d. The Casino Operator, Casino Manager, and each casino gaming licensee shall take reasonable steps to ensure that no winnings or losses arising as a result of prohibited casino gaming activity are paid or recovered by a board excluded person.

e. It shall be the continuing duty of the Casino Operator, Casino Manager, and each casino gaming licensee to inform the board and division in writing of the names of persons it knows or has reason to know are appropriate for placement on the board exclusion list.

#### 7. Sanctions

a. Any casino gaming licensee, Casino Operator or Casino Manager who willfully fails to exclude a board excluded person from the casino gaming establishment shall be in violation of these rules and may be subject to administrative action pursuant to R.S. 27:27.2.F and this Section.

b. The penalty for violation of LAC 42:III.303.C.7.a shall be \$25,000 or administrative action including but not limited to suspension or revocation.

#### 8. Removal from the Board Exclusion List

a. Hearing. Any person who desires to have his name removed from the board exclusion list shall submit a written request to the board requesting a hearing before a hearing officer.

b. Absent. A change in circumstances that would have affected the board exclusion No person shall request a hearing to be removed from the board exclusion list for a period of five years from the date of the final decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 28:

### §304. Self-Exclusion

A. Pursuant to R.S. 27:27.1, the Louisiana Gaming Control Board hereby provides for the establishment of a list

of persons who, at his or her request, are to be excluded or ejected from all casino gaming establishments licensed or operating pursuant to Chapters 4, 5, and 7 of the Louisiana Gaming Control Law, R.S. 27:1 et seq.

#### B. Definitions

1. The following words and terms, when used in this Section, shall have the following meanings unless the context clearly indicates otherwise.

*Casino Gaming Establishment* Any room, premises, or designated gaming area of any establishment where gaming is conducted pursuant to Chapters 4, 5, and 7 of the Louisiana Gaming Control Law.

*Self-Excluded Person* Any person whose name is included, at his or her request, on the self-exclusion list maintained by the board.

*Self-Exclusion List* A list of names of persons who have voluntarily agreed to be excluded from all gaming activities and to be prohibited from collecting any winnings or recovering any losses at all licensed casino gaming establishments.

#### C. Request for Self-Exclusion

1. Any person may have his or her name placed on the self-exclusion list by submitting a request for self-exclusion in the form and manner required by this Section.

2. Any person requesting placement on the self-exclusion list shall submit, in person, a completed request for self-exclusion as required in Paragraph C.4 below. The request shall be delivered to an Office of State Police, Casino Gaming Division. Any person submitting a self-exclusion request shall be required to present valid identification credentials. Any person requesting self-exclusion pursuant to this Section shall be required to have his or her photograph taken by a division agent upon submission of the request.

3. No person placed on the self-exclusion list may request removal for a period of five years from the date the person is placed on the self-exclusion list.

4. A request for self-exclusion shall be in a form prescribed by the board. Such form shall include:

a. identifying information concerning the person submitting the request for self-exclusion, as follows:

i. name, including any known aliases or nicknames;

ii. date of birth, driver's license or state identification number, if available;

iii. current home and business address;

iv. telephone number of current residence;

v. Social Security number, which information is voluntarily provided in accordance with Section 7 of the Privacy Act, 5 U.S.C. § 552(a); and

vi. a physical description of the person, including height, weight, gender, hair color, eye color, and any other physical or distinguishing characteristics that may assist in the identification of the person;

vii. the date of exclusion;

b. a waiver and release which shall release, forever discharge, indemnify and hold harmless the state of Louisiana, the Louisiana Gaming Control Board ("Board"), the Louisiana Department of Public Safety and Corrections, Office of State Police ("State Police"), the Department of Justice, Office of the Attorney General ("Attorney General's Office") and their members, agents, and employees, from

any liability to the person requesting self-exclusion and his or her heirs, administrators, executors and assigns for any harm, monetary or otherwise, which may arise out of or by reason of any act or omission relating to the request for self-exclusion, request for removal from the self-exclusion list, or removal from the self-exclusion list, including:

i. processing or enforcement of the request for self-exclusion, request for removal or removal from the self-exclusion list;

ii. the failure of the Casino Operator or Casino Manager or a casino gaming licensee to withhold gaming privileges from, or restore gaming privileges to, a self-excluded person;

iii. permitting a self-excluded person to engage in gaming activity in a licensed casino gaming establishment while on the list of self-excluded persons; and

iv. disclosure of the information contained in the self-exclusion request or list, except for a willful unlawful disclosure of such information;

c. the following statement signed by the person submitting the request for self-exclusion:

"I understand and read the English language or have had an interpreter read and explain this form. I am voluntarily requesting exclusion from all gaming activities at all Louisiana casino gaming establishments because I am a compulsive and/or problem gambler. I certify that the information that I have provided above is true and accurate, and that I have read, understand, and agree to the waiver and release included with this request for self-exclusion. I am aware that my signature below authorizes the Board or the State Police to direct all Louisiana casino gaming licensees, including the Casino Operator and Casino Manager, to restrict my gaming activities and access to casino gaming establishments for a minimum period of five years from the date of exclusion. During such period of time, I will not attempt to enter any casino gaming establishment. I further understand that my name will remain on the self-exclusion list until 1) I submit a written request to the board to terminate my self-exclusion; 2) a hearing is held; and 3) there is a written decision of the Board determining that there is no longer a basis for me to be maintained on the list. I am aware that I cannot request removal from the list before five years have elapsed from the date of exclusion. I am aware and agree that during any period of self-exclusion, I shall not collect in any manner or proceeding any winnings or recover any losses resulting from any gaming activity at any casino gaming establishment and that any money or thing of value obtained by me from, or owed to me by, the Casino Operator, Casino Manager, or a casino gaming licensee as a result of wagers made by me while on the self-exclusion list shall be withheld and remitted to the state of Louisiana."

d. the type of identification credentials examined containing the signature of the person requesting self-exclusion, and whether the credentials included a photograph of the person; and

e. the signature of a board or division member, agent, or employee authorized to accept such request, indicating that the signature of the person on the request for self-exclusion appears to agree with that contained on his or her identification credentials and that any photograph or physical description of the person appears to agree with his or her actual appearance.

5. Upon receipt and acceptance of the request for self-exclusion and completion and submission of all required information and documentation the requesting party shall be placed on the self-exclusion list by the division.

#### D. Self-Exclusion List

1. The board shall maintain a list of persons who, at his or her request, are excluded and are to be ejected from all casino gaming establishments.

2. The list shall not be open to public inspection.

3. The list shall be distributed by the division to the Casino Operator or Casino Manager and each casino gaming licensee who shall acknowledge receipt of the list in writing. The division shall notify the Casino Operator, Casino Manager and all casino gaming licensees of the addition of new names and removal of names from the self-exclusion list within two business days of the effective date of such action.

4. The Casino Operator or Casino Manager and each casino gaming licensee shall maintain a copy of the self-exclusion list and shall establish procedures to ensure that the self-exclusion list is updated and that all appropriate members, employees and agents of the Casino Operator or Casino Manager and each casino gaming licensee are notified of any addition to or deletion from the list within five business days after receipt of the notice from the division. Appropriate members, employees, and agents of the Casino Operator or Casino Manager and each casino gaming licensee are those whose duties and functions require access to such information. The notice provided by the division shall include the name and date of birth of any person whose name shall be removed from the self-exclusion list and the following information concerning any person whose name shall be added to the self-exclusion list:

- a. name, including any known aliases or nicknames;
- b. date of birth;
- c. address of current residence;
- d. telephone number of current residence;
- e. Social Security number, if voluntarily provided

by the person requesting self-exclusion;

f. driver's license or state identification number;

g. a physical description of the person, including height, weight, gender, hair color, eye color and any other physical or distinguishing characteristic that may assist in the identification of the person; and

h. a copy of the photograph taken by the division.

5. Information furnished to or obtained by the board and division pursuant to this Section shall be deemed confidential and not be disclosed pursuant to R.S. 27:27.1.

6. Neither the Casino Operator, Casino Manager, nor any casino gaming licensee or any employee or agent thereof shall disclose the self-exclusion list or the name of, or any information about, any person who has requested self-exclusion to anyone other than employees and agents of the Casino Operator or Casino Manager or casino gaming licensee whose duties and functions require access to such information. Notwithstanding the foregoing, the Casino Operator or Casino Manager and each casino licensee may disclose the name of and information about a self-excluded person to appropriate employees of other casino licensees in Louisiana for the purpose of alerting other casinos that a self-excluded person has tried to gamble or obtain gaming related privileges or benefits in a casino gaming establishment. Nothing herein shall be construed to prohibit the licensee from disclosing the identity of self-excluded persons to affiliated entities in Louisiana and other gaming jurisdictions for the limited purpose of assisting in the proper

administration of compulsive and problem gaming programs operated by such affiliated entities.

E. Duties of the Casino Operator, Casino Manager, and each Casino Gaming Licensee

1. The Casino Operator or Casino Manager and each casino gaming licensee shall establish procedures that are designed, to the greatest extent practicable, to:

a. permit appropriate employees of the Casino Operator or Casino Manager and the casino gaming licensee to identify a self-excluded person when present in the casino gaming establishment and, upon such identification, immediately notify:

i. those employees of the Casino Operator or Casino Manager and the casino gaming licensee designated to monitor the presence of self-excluded persons; and

ii. appropriate representatives of the board and division;

b. refuse wagers from and deny any gaming privileges to any self-excluded person;

c. deny casino credit, check cashing privileges, player club membership, direct mail and marketing services complimentary goods and services, junket participation and other similar privileges and benefits to any self-excluded person;

d. enforce the provisions of LAC 42:III.304.D.6.

2. The Casino Operator or Casino Manager and each casino gaming licensee shall distribute a packet of written materials approved by the Division to any person inquiring or requesting information concerning the board's self-exclusion program.

3. The Casino Operator or Casino Manager and each casino licensee shall submit to the board for approval a copy of its procedures established pursuant to LAC 42:III.304.D.4 and E.1 above within 120 days from the date this rule becomes effective. Any amendments to said procedures shall be submitted to the board and approved prior to implementation.

4. If a self-excluded person enters, attempts to enter, or is in the casino gaming establishment and is discovered by the Casino Operator or Casino Manager or any casino gaming licensee, the Casino Operator or Casino Manager or casino gaming licensee shall immediately notify the division of such fact and, unless otherwise directed by the division, immediately eject such excluded person from the casino gaming establishment.

5. Upon discovery of a self-excluded person in the casino gaming establishment, both the security and surveillance departments of the Casino Operator, Casino Manager and casino gaming licensees shall initiate a joint investigation, unless otherwise directed by the division.

a. The joint investigation shall seek to determine:

i. responsibility of employees of the gaming establishment for allowing an excluded person to gain access to the casino gaming establishment; and

ii. the net amount of winnings or losses attributable to the excluded person.

b. The Casino Operator or Casino Manager and each casino gaming licensee shall provide a written report of the results of the joint investigation to the division.

6. The casino gaming establishment shall ensure that no winnings or losses arising as a result of prohibited

gaming activity are paid or recovered by a self-excluded person.

F. Sanctions

1. Any casino gaming licensee, Casino Operator, or Casino Manager who willfully fails to exclude a self-excluded person from the casino gaming establishment shall be in violation of these rules and may be subject to administrative action pursuant to R.S. 27:27.1.J and this Section.

2. The penalty for violation of LAC 42:III.304.F.1 shall be \$25,000 or administrative action including but not limited to suspension or revocation.

G. Removal from Self-Exclusion List

1. Any self-excluded person may, upon the expiration of five years from the date of exclusion, submit a written request to the board for a hearing to have his or her name removed from the self-exclusion list. Such request shall be in writing and state with specificity the reason for the request.

2. The request shall include a written recommendation from a qualified mental health professional as to the self-excluded person's capacity to participate in gaming activities without adverse risks or consequences. The person seeking removal from the self-exclusion list may be required to obtain a separate and independent recommendation from a qualified mental health professional, approved by the hearing officer, as to the self-excluded person's capacity to participate in gaming activities without adverse risks or consequences.

3. If the hearing officer determines that there is no longer a basis for the person seeking removal to be maintained on the self-exclusion list, the person's name shall be removed from the self-exclusion list and his or her exclusion shall be terminated. The division shall notify the Casino Operator or Casino Manager and all casino gaming licensees of the determination. The Casino Operator, Casino Manager or any casino gaming licensee may continue to deny gaming privileges to persons who have been removed from the list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 28:

### **§305. Advertising; Compulsive Gambling Information**

A. In any advertisement of gaming activities or of a gaming establishment conducting operations pursuant to the provisions of Chapters 4, 5, 6 or 7 of the Louisiana Gaming Control Law that is offered to the general public in print by any licensee or the Casino Operator or Casino Manager, the toll-free telephone number of the National Council on Problem Gambling or a similar toll-free number approved by the board shall be placed on such advertisement.

B. The penalty for violation of this Section shall be \$1,000 for the first offense, \$2,500 for the second offense and \$5,000 for the third offense. The penalty for fourth and subsequent offenses shall be \$5,000 or administrative action including but not limited to suspension or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control board, LR 28:

**Part VII. Pari-Mutuel Live Racing Facility  
Slot Machine Gaming**

**Chapter 29. Operating Standards**

**§2933. Compulsive or Problem Gamblers-Telephone  
Information and Referral Service-Posting**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:767 (April 2000), repealed LR 28:

**Chapter 37. List of Excluded Persons**

Chapter 37 is repealed in its entirety.

**Part IX. Landbased Casino Gaming**

**Chapter 29. Operating Standards**

**§2939. Compulsive or Problem Gamblers-Telephone  
Information and Referral Service-Posting**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and R.S. 27:24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1954 (October 1999), repealed LR 28:

**Chapter 37. List of Excluded Persons**

Chapter 37 is repealed in its entirety.

**Part XI. Video Poker**

**Chapter 24. Video Draw Poker**

**§2407. Operation of Video Draw Poker Devices**

A. - A.16. ...

17. Repealed.

B. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety, Gaming Control Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 28:

**Part XIII. Riverboat Gaming**

**Chapter 29. Operating Standards**

**§2933. Compulsive or Problem Gamblers Telephone  
Information and Referral Service-Posting**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995).

**Chapter 37. List of Excluded Persons**

Chapter 37 is repealed in its entirety.

**Family Impact Statement**

Pursuant to the provisions of R.S. 49:953.A. the Louisiana gaming Control Board, through its chairman, has considered the potential family impact of adopting LAC 42:III.301 et seq.

It is accordingly concluded that adopting LAC 42:III.301 et seq. would appear to have a positive yet inestimable impact on the following:

1. the effect on stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;

5. the effect on the behavior and personal responsibility of children;

6. the ability of the family or a local government to perform the function as contained in the proposed rule.

All interested persons may contact Tom Warner, Attorney General's Gaming Division, telephone (225) 342-2465, and may submit comments relative to these proposed rules, through May 10, 2002, to 339 Florida Street, Suite 500, Baton Rouge, LA 70801.

Hillary J. Crain  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Compulsive and Problem Gambling**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that there will be no direct implementation costs or savings to state or local government units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

No effect on revenue on revenue collections is anticipated.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

Costs will be incurred by casino licensees and the Casino Operator (Harrah's-New Orleans) in order to develop and implement new, additional, compulsive and problem gambling programs. The industry estimates cost for the first year to be between \$50,000-\$75,000 per property for program development, implementation, employee training, and monitoring. Sixteen casino gaming establishments are in operation at this time, therefore FY 2002-2003 costs to directly affected persons are estimated to be between \$800,000 and \$1,200,000. Costs in subsequent years should decrease significantly.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

No effect on competition or employment is estimated.

Hillary J. Crain  
Chairman  
0204#046

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Policy Services Division**

**Definition of Lease or Rental  
(LAC 61:I.4301)**

Under the authority of R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 47:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4301 relative to the definition of *lease or rental* for sales tax purposes.

These proposed amendments provide guidance concerning exclusions from the definition of *lease or rental* provided by R.S. 47:301(7)(b) through (h). The proposed amendments also provide guidance to lease-rental dealers and their customers in distinguishing between transactions for the *lease or rental* of tangible personal property and transactions



for the providing of services. The proposed Rule addresses transactions to distinguish between lease-rentals and services, including furnishing of lighted construction barricades, furnishing of ornamental plants by an owner who agrees to water, fertilize, prune, and otherwise care for the plants, furnishing of portable toilet facilities, furnishing of scaffolding, furnishing of gas compression equipment, furnishing of refuse dumpsters by refuse service companies, and cylinder retention (demurrage) charges in connection with the sale of compressed gases.

This proposed Rule will supersede any conflicting policy statements previously issued by the department, including Policy and Procedure Memoranda. This is consistent with LAC 61:III.101.D.1, which provides that Policy and Procedure Memoranda may not be used to disseminate tax policy.

## **Title 61**

### **REVENUE AND TAXATION**

#### **Part I. Taxes Collected and Administered By the Secretary of Revenue**

#### **Chapter 43. Sales and Use Tax**

#### **§4301. Definitions**

A. - C. ...

\* \* \*

#### ***Lease or Rental***

a. General. The *lease or rental* of tangible personal property for a consideration is a transaction that is subject to the sales tax. The term *lease or rental* means to grant another the right to use or possess tangible personal property for a period of time and for a consideration without the transfer of title to the property. Re-leases or sub-leases and re-rentals or sub-rentals are also considered leases or rentals.

b. Statutory Exclusions. The following arrangements or agreements for the use of tangible personal property are specifically excluded from the definition of *lease or rental* in R.S. 47:301(7)(b) through (h):

i. the *lease or rental* for re-lease or re-rental of property to be used in connection with the operating, drilling, completion, or reworking of oil, gas, sulphur, or other mineral wells;

(a). the *lease or rental* for re-lease or re-rental of casing tools, pipe, drill pipe, tubing, compressors, tanks, pumps, power units, and other drilling or related equipment qualifies for exclusion if the property is to be used for one of the specified purposes;

(b). the re-lease or re-rental to the ultimate user is not exempt;

ii. the *lease or rental* of property to be used in the performance of contracts with the United States Navy for the construction or overhaul of U.S. Naval vessels;

iii. the *lease or rental* of airplanes or airplane equipment by commuter airlines domiciled in Louisiana;

iv. the *lease or rental* of items that are reasonably necessary for the operation of free hospitals in Louisiana;

v. the *lease or rental* of certain items of educational materials for classroom instruction by approved private and parochial elementary and secondary schools;

vi. the *lease or rental* by Boys State of Louisiana, Inc. and Girls State of Louisiana, Inc. of materials for use by those organizations in their educational and public service programs for youth; and

vii. the *lease or rental* of motor vehicles by motor vehicle dealers and manufacturers for use by customers in the performance of dealers' or manufacturers' warranty obligations or when the applicable warranty has lapsed and the leased or rented motor vehicle is provided at no charge.

#### **c. Other Exceptions**

i. Some arrangements for the use of tangible personal property are not considered leases or rentals because of the implied nature of the arrangement. Arrangements that are not considered leases or rentals are transactions where the true object is to secure a service or a revenue sharing agreement.

ii. The term *lease or rental* does not include transactions that provide a service. The "providing of a service" is any transaction that includes the performance of services along with tangible personal property for a consideration when the performance of the service is the essence of the transaction. Establishing the nature of a transaction involving both the rendering of a service and the providing of tangible personal property as a service or a taxable *lease or rental* is determined by identifying the "true object" of the transaction. Identifying the "true object" of a transaction involves a fact-intensive analysis that includes an evaluation of the purpose and degree of the owner's ongoing contact with the tangible personal property or the percentage of time that the owner operates or controls the tangible personal property.

(a). Purpose and Degree of the Owner's Control over Tangible Personal Property while It Is in Service to Another

(i). When the owner or the owner's equipment operator retains control of the tangible personal property, the purpose of the owner's control must be examined. If the lessee cannot operate the equipment without the presence of the owner's operator, then this factor indicates that the essence of the transaction is a service.

(ii). The purpose of the owner's contact is relevant even if a person can direct the specific use of the owner's equipment while it is operated by the owner's operator. This is especially true for equipment such as boats, draglines, trucks, tractors, or automobiles. The owner of the equipment is performing a service through the actions of its operator and, because the lessee would be unable to operate the tangible personal property of the owner without the operator, the true object of the transaction is a service.

(iii). Even when the owner retains contact with the tangible personal property after providing the property to the customer, the degree of owner control should be considered. This is especially critical when the owner merely provides advisory personnel and the customer has the capability of operating the equipment without their assistance. For example, a computer manufacturer may lease or rent a computer to a customer and provide technical support by its employees. The customer operates the computer and only contacts the technical support personnel when there is a problem. This transaction would be considered a *lease or rental* because the computer manufacturer's employees are merely providing advice and the customer has the ability to operate the computer without the assistance of the owner's personnel.

(b). Percentage of Time That the Owner Operates or Controls the Tangible Personal Property. The factor to consider in this element is whether or not the owner or its operators have continuous personal contact over the property while the property is being used for its intended purpose by the customer. If, however, the owner's personnel contact the property only periodically while the property is in service to customers, such as for servicing or maintaining the property, then the small amount of time that the owner controls the property would not rise to the level of providing a service.

iii. The tax imposed on *lease or rental* payments also applies to charges for maintaining or servicing tangible personal property when these charges are a necessary component of the *lease or rental*. Even if these charges are separately stated, they are still subject to the sales tax on *lease or rental* payments because the lessee is required to purchase these services as a condition of the *lease or rental* agreement.

d. Examples

i. Taxable Leases or Rentals. The following transactions are examples of taxable leases or rentals of tangible personal property. These examples are for illustration only and are not intended to be all-inclusive:

(a). Lighted Construction Barricades. When barricades and lights are placed on a construction area, they remain on the project site with little or no contact by the owners other than as necessary to maintain the property, such as changing batteries or bulbs.

(b). Plants. A nursery delivers and places live ornamental plants at an office and the plants remain the property of the plant nursery. The nursery has only minimal contact to water, fertilize, and prune the plants, which is necessary to maintain its property.

(c). Portable Toilets. Portable toilet facilities are delivered to a location with only periodic maintenance of the property. The true object of the transaction is to provide additional restroom facilities for workers or people attending special events. Servicing of the toilets is a necessary charge that the lessee must purchase as a condition of the *lease or rental* agreement.

(d). Scaffolding. A company that delivers and erects scaffolding at a location designated by a customer, leaves the site, and returns only to dismantle and move or to repair the scaffolding has entered into a taxable *lease or rental* transaction. The owners of the scaffolding company are not in continuous control of the scaffolding and once erected, the scaffolding serves the purpose contracted for by the customer.

(e). Gas Compression Equipment. A gas compression company that provides equipment at a gas field to boost pressure does not exert continuous physical and personal control over the equipment through its employees or operators. Since the gas compression company does not retain contact with the equipment, the customer has been granted possession and use of the equipment for a period of time for a consideration. The true object of this transaction is the *lease or rental* of the equipment.

(f). Retention Fees and Late Charges Associated With a Taxable Sale or Lease-Rental. Some taxable sales of tangible personal property include an agreement allowing the customer to retain the seller's container or property for a certain period of time. An example would be a customer's

right to temporarily possess a seller's cylinders containing welding gas. If the cylinder is retained past a certain designated period, the gas seller charges the customer a retention or demurrage charge for this privilege. This retention charge associated with a taxable sale of tangible personal property is a taxable *lease or rental* payment because it represents consideration paid by a customer for the right to use or possess equipment belonging to another. Similarly, late fees that customers are charged for retaining tangible personal property past the period of time originally agreed upon by the parties, such as the leasing of automobiles or the renting of videotapes, are also taxable.

ii. Nontaxable Services. The following transactions involving the owner's tangible personal property are considered nontaxable services. These examples are for illustration only and are not intended to be all-inclusive.

(a). Scaffolding. When a scaffolding company's personnel are on their customers' sites at all times to move or adjust the scaffolding while it is being used by the customers, then the true object of the transaction is a nontaxable service.

(b). Gas Compression Equipment. The true object of a contract between a customer and a company providing gas compression equipment is a nontaxable service when the gas compression company provides gas compression equipment with personnel who will be continuously present on-site to monitor and adjust the equipment as necessary.

(c). Refuse Service. The customer's intent in entering into this transaction is to obtain nontaxable refuse service. Even if a refuse company requires all of its customers to utilize a particular refuse container owned by the company in order for the customer to receive the service of refuse removal, the true object of the agreement is periodic refuse removal. The dumpster is incidental tangible personal property that assists the refuse company in identifying customers that have purchased its refuse removal services.

(d). Retention Fees and Late Charges Associated with the Providing of a Nontaxable Service. In providing a nontaxable service, such as freight transportation, some companies charge customers additional fees for retaining the company's property, such as freight cars or tractor-trailers, past the original period designated by the parties. This additional fee is nontaxable because it is incidental to the original transaction, a nontaxable service.

iii. Revenue Sharing Arrangements. Agreements, joint ventures, arrangements, or partnerships between movie theater operators and film distributors place significant restrictions on the use of the movies and the proceeds from the use of the movies. These agreements are more in the nature of revenue sharing agreements and would not qualify as leases or rentals because of the restrictions placed on the party using the movies. An example of this arrangement would be an agreement between a movie theater operator and a film distributor that not only stipulates that the proceeds from the showing of the film are to be shared, but also specifies the amount to be charged to the movie patron, the number of or the time of showings, or the types or sizes of the facilities where the film is shown.

\* \* \*

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:

### Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the notice of intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation of this proposed rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 15409, Baton Rouge, LA 70895-5409 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m. Tuesday, May 28, 2002. A public hearing will be held on Wednesday, May 29, 2002, at 10 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney  
Senior Policy Consultant

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Definition of Lease or Rental

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this proposed rule will have no impact on state or local governmental units' costs. This proposal amends the Department's interpretation of "lease or rental" for sales tax purposes as defined in R.S. 47:301(7). This proposal is being adopted to better reflect the actual intent of transactions involving this issue.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There could be an effect on the revenue collections of state and local governmental units as a result of this proposed regulation. This proposal would consider many transactions that have previously been treated as nontaxable services involving tangible personal property to be taxable rentals and require the payment of sales and use tax on them. Conversely, taxpayers previously considered as engaging in nontaxable services involving the use of tangible personal property could not purchase tangible personal property tax free under the provisions of R.S. 47:301(10) and (18). These statutes allow an "exclusion" from sales tax for tangible personal property purchased for lease or rental. Because of this proposal, more vendors would qualify for this exclusion. The net effect of these actions is indeterminable, but thought to be immaterial.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed regulation would increase costs to customers of services that were previously considered not taxable while providing an economic benefit to the vendors of those services. The estimated costs to customers and the economic benefits to vendors are indeterminable, but believed to be immaterial.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0204#082

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Revenue Policy Services Division

#### Furnishing of Cold Storage Space (LAC 61:I.4301)

Under the authority of R.S. 47:301 and R.S. 47:1511 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4301 relative to the definition of the furnishing of cold storage space for sales tax purposes.

Revised Statute 47:301(14)(f) defines *sales of services* to include "the *furnishing of cold storage space* and the furnishing of the service of *preparing tangible personal property for cold storage*, where such service is incidental to the operation of storage facilities." These proposed amendments provide guidance concerning the types of transactions that are within the purview of the statute. The service *furnishing of cold storage space* is interpreted to mean all transactions in which customers, for consideration, are provided the use of frozen or refrigerated facilities including but not limited to transactions in which an owner or operator of a frozen or refrigerated facility sets aside a specified quantity of refrigerated or frozen space in that facility for customers and transactions in which possession of the customers' property is transferred to the owner or operator of a frozen or refrigerated facility for retention and safekeeping in the facility as in a bailment or deposit.

The proposed amendments also clarify that sales tax must be collected on the charges for *preparing tangible personal property for cold storage*, such as packaging, wrapping, containerizing, cleaning, or washing, when provided in conjunction with the *furnishing of cold storage space*. Under the proposed rule, the furnishing of air-conditioned warehouses or mini-storage units, that are cooled only to a normal room temperature level or above, are not considered the *furnishing of cold storage space* for sales tax purposes.

#### Title 61

### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 43. Sales and Use Tax

#### §4301. Definitions

A. - C. ...

\*\*\*

#### *Sales of Services*C

a. - g.iii. ...

h. R.S. 47:301(14)(f) defines the furnishing of cold storage space and preparing tangible personal property for cold storage as services subject to sales and use tax.

i. *Cold Storage Space*Cany enclosed area where the temperature or humidity is regulated. The temperature does not have to be reduced below that of the outside atmosphere, however it must be controlled to the extent necessary for the proper preservation of the items stored therein.

ii. *Furnishing of Cold Storage Space*Cincludes all transactions in which customers, for consideration, are allowed to use *cold storage space* facilities, including but not limited to transactions in which:

(a). the owner or operator of a *cold storage space* sets aside a specific area or volume of space in the facility for customers, when customers are required to compensate for the space set aside regardless of the degree of use of that space; and

(b). the possession of customers' property is transferred to the owner or operator of a *cold storage space* for retention and safekeeping in the facility as a bailment or deposit transaction.

iii. Charges for the *furnishing of cold storage space* are subject to sales and use tax even when:

(a). the specific space occupied or set aside for customers is not the same space for the duration of the customers' use;

(b). the owner of the facility retains discretion in assigning or reassigning customers' space;

(c). customers do not have independent access to the space set aside for them in the frozen or refrigerated facility; or

(d). the charges are measured by weight, volume, or type of product to be stored or the temperature of storage, or any combination of these or other factors.

iv. Storage space in air-conditioned warehouses or mini-storage units, that are cooled only to a normal room temperature level or above, are not considered the *furnishing of cold storage space* for sales tax purposes.

v. *Preparing tangible personal property for cold storage* is included in *sales of services* only if it is incidental to the operation of cold storage facilities.

(a). *Preparing tangible personal property for cold storage* includes but is not limited to packaging, wrapping, containerizing, cleaning or washing.

(b). Separately stated charges for handling the property to be placed in or removed from the facility are not subject to the sales tax. If handling charges are included in the price for the *furnishing of cold storage space* or *preparing tangible personal property for cold storage*, tax is due on the entire amount.

\*\*\*

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:

#### Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation of this proposed rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, May 28, 2002. A public hearing will be held on Wednesday, May 29, 2002, at 1:30 p.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney  
Senior Policy Consultant

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Furnishing of Cold Storage Space**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

These proposed amendments, pertaining to taxable services under R.S. 47:301(14)(f), expand the definitions of "cold storage" and "preparing tangible personal property for cold storage" to reflect the transaction's intent in determining whether it is a taxable service. Implementation of these proposed amendments will have no impact on state or local governmental units' costs.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There should be an increase in the sales and use tax collections of state and local governmental units as a result of these proposed amendments. Under this proposal, many transactions previously considered nontaxable will be considered taxable services under R.S. 47:301(14)(f). We do not have data to calculate the additional state and local sales tax that will be collected as a result of these proposed amendments, but the additional amount is estimated to be minimal.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

These proposed amendments will increase costs to customers who purchase storage services that were previously considered not taxable. We do not have data to estimate these additional costs, but the additional costs are believed to be minimal.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

These proposed amendments should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0204#081

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

TANF Review  
(LAC 67:III.902, 1207, 2902, 5203, 5305, and 5407)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, §§902 and 1207 in the Family Independence Temporary Assistance Program (FITAP), §2902 in the Family Independence Work Program (FIND Work), §5203 in the Wrap-Around Child Care Program, §5305 in the Kinship Care Subsidy Program (KCSP), and §5407 in the Teen Pregnancy Prevention Program. The proposed amendments were effected February 5, 2002, by a Declaration of Emergency.

These changes are corrections being made at the direction of the United States Department of Health and Human Services, Administration for Children and Families, following a review of Louisiana's Temporary Assistance for Needy Families (TANF) State Plan for these programs, all of which are funded by the TANF Block Grant to Louisiana.

In order to begin the process of welfare reform, the agency adopted its state plan as it existed on October 1, 1996;

however, the agency failed to elect a date under the federal grandfather provision. Therefore, the state plan adoption date is being corrected for FITAP and FIND Work.

The text in §§1207 and 5305 is being expanded to clarify a client's right to a fair hearing.

Language at §5203 is being amended to specify who is required to furnish proof of a social security number in the Wrap-Around Child Care Program.

The review noted that the Teen Pregnancy Prevention Program does not address the problem of statutory rape. This language is being added to §5407.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

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

**Chapter 9. Administration**

**§902. State Plan**

A. The Title IV-A State Plan as it existed on August 21, 1996, is hereby adopted to the extent that its provisions are not in conflict with any emergency or normal rules adopted or implemented on or after August 21, 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474, R.S. 46:233 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:448 (April 1997), amended LR 28:

**Chapter 12. Application, Eligibility, and Furnishing Assistance**

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

**§1207. Certification Period and Reapplication**

A. Certification periods of a set duration will be assigned. In order to continue to receive benefits, the household must timely reapply and be determined eligible. In the month preceding the final month of certification, a notice of expiration and Application for Continued Assistance will be provided to the household. The notice shall inform the household that failure to timely reapply will result in closure and include the right to a fair hearing. If the payee fails, without good cause, to keep a scheduled appointment, the case will be closed without further notification. Also, if during the application process, a change is reported which results in a determination of ineligibility or a reduction in benefits, this change will be made effective the following month.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2447 (December 1999), amended LR 28:

**Subpart 5. Family Independence Work Program (FIND Work)**

**Chapter 29. Organization**

**Subchapter A. Designation and Authority of State Agency**

**§2902. State Plan**

A. The Title IV-F and IV-A/F State Plan as it existed on August 21, 1996, is hereby adopted to the extent that its provisions are not in conflict with any emergency or normal rules adopted or implemented on or after August 21, 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474, R.S. 46:233 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:450 (April 1997), amended LR 28:

**Subpart 12. Child Care Assistance**

**Chapter 52. Wrap-Around Child Care Program**

**§5203. Conditions of Eligibility**

A. - D. ...

E. The household must provide the information and verification necessary for determining eligibility and payment amount. Required verification includes:

1. proof of social security numbers, that is, each applicant for, or recipient of, Wrap-Around Child Care is required to furnish a Social Security number or to apply for a Social Security number if such a number has not been issued or is not known;

E.2. - G ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:429 (March 2001), amended LR 27:1560 (September 2001), LR 28:

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

**Chapter 53. Application, Eligibility, and Furnishing Assistance**

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

**§5305. Certification Period and Reapplication**

A. Certification periods of a set duration will be assigned. In order to continue to receive benefits, the household must timely reapply and be determined eligible. In the month preceding the final month of certification, a notice of expiration and Application for Continued Assistance will be provided to the household. The notice shall inform the household that failure to timely reapply will result in closure and include the right to a fair hearing. If the payee fails, without good cause, to keep a scheduled appointment, the case will be closed without further notification. Also, if during the re-application process, a change is reported which results in a determination of ineligibility the case will be closed.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:351 (February 2000), amended LR 28:

**Subpart 14. Teen Pregnancy Prevention**

**Chapter 54. Teen Pregnancy Prevention Program**

**§5407. Program Activities**

A. The following program activities shall be used to coordinate the teen-oriented programs in Louisiana. These activities allow for expanding, redeveloping, and refining of these programs to ensure that the goals and objectives will be met:

1. - 7. ...

8. outreach and education on the problems of statutory rape directed towards law enforcement, education, and counseling services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:

**Family Impact Statement**

This rule will have no impact on the stability and functioning of the family or on parental rights and will have no impact on the budget of the affected family.

Interested persons may submit written comments by May 29, 2002, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065. She is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on May 29, 2002, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Gwendolyn P. Hamilton  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: TANF Review**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The cost of the added program activity in the Teen Pregnancy Prevention Program will be kept within the program's annual budget of \$7,500,000. Although the annual budget will not change, the agency now intends to administer the program activities through a smaller number of contractors. Thus, the cost of this added activity will be absorbed with no increase in program costs. Otherwise, the proposed rule corrects language in various sections of the LAC. Current policy and procedures which direct the various TANF-funded programs are such that the intent of the amended language is presently being followed and administered by the agency. The immediate implementation cost to state government is the minimal cost of publishing the rule and printing policy changes at a projected cost of \$568. Funds for such actions are included in the agency's annual budget. There are no costs or savings to local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This rule will have no impact on revenue collections of state and local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no estimated costs or economic benefits to directly affected persons or non-governmental groups as a result of this proposed rule.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will have no impact on competition and employment.

Ann S. Williamson  
Assistant Secretary  
0204#071

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Social Services Office of Family Support

TANF Review Aliens  
(LAC 67:III.1223, 1931, 1932, and 5323)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Chapter 12, Family Independence Temporary Assistance Program (FITAP), Chapter 19, Food Stamp Program, and Chapter 53, Kinship Care Subsidy Program (KCSP) by amending §1223 in the Family Independence Temporary Assistance Program (FITAP), §1931 and 1932 in the Food Stamp Program, and §5323 in the Kinship Care Subsidy Program (KCSP).

These changes are corrections being made at the direction of the United States Department of Health and Human Services, Administration for Children and Families, following a review of the FITAP chapter of Louisiana's TANF State Plan. Since federal regulations regarding citizenship and alien eligibility apply to the Kinship Care Subsidy and Food Stamp Programs, review of LAC regulations and program policy revealed that corrections were also needed regarding food stamps and KCSP. Although most of these corrections are either grammatical or technical, one change adds a new class of eligible aliens - victims of trafficking in persons. These corrections were effected by an emergency rule signed February 5, 2002.

#### Title 67 SOCIAL SERVICES

#### Part III. Office of Family Support

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

#### Chapter 12. Application, Eligibility, and Furnishing Assistance

#### Subchapter B. Conditions of Eligibility

#### §1223. Citizenship

A. Each FITAP recipient must be a United States Citizen, a non-citizen national, or a qualified alien. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. A qualified alien is:

1. - 4. ...
5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-208);
6. - 8.b. ...
- c. cancellation of removal under Section 1229b of the INA (as in effect prior to April 1, 1997); or
- d. ...
- e. cancellation of removal pursuant to section 1229b(b)(2) of the INA;
9. an alien child of a battered parent or the alien parent of a battered child as described in §1223.A.8; or
10. an alien who is a victim of a severe form of trafficking in persons.

B. Time-Limited Benefits. A qualified alien who enters the United States on or after August 22, 1996, is ineligible for five years from the date of entry into the United States unless:

1. - 2. ...
3. the alien's deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] 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. ...
5. the alien is an *Amerasian* immigrant admitted pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 as amended;
6. - 7. ...
8. the alien is a victim of a severe form of trafficking in persons.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2448 (December 1999), amended LR 26:1342 (June 2000), LR 27:2263 (December 2001), LR 28:

#### Subpart 3. Food Stamps

#### Chapter 19. Certification of Eligible Households

#### Subchapter D. Citizenship and Alien Status

#### §1931. Qualified Aliens

A. In addition to U.S. citizens, the following qualified aliens are eligible for benefits:

1. - 4. ...
5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-208);
6. - 8.b. ...
- c. cancellation of removal under Section 1229b of the INA (as in effect prior to April 1, 1997); or
- d. ...
- e. cancellation of removal pursuant to Section 1229b(b)(2) of the INA;
9. an alien child of a battered parent or the alien parent of a battered child as described in §1931.A.8; or,
10. an alien who is the victim of a severe form of trafficking in persons.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 104-208, P.L. 105-33, P.L. 105-185, and P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 7:265 (May 1981), amended by the Department of Social Services, Office of Family Support, LR 22:286 (April 1996), LR 25:710 (April 1999), LR 28:

#### §1932. Time Limitations for Certain Aliens

A. The following qualified aliens are eligible for benefits for a period not to exceed seven years after they obtain designated alien status:

1. - 2. ...
3. an alien whose deportation is withheld under §243(h) of such ACT (as in effect immediately before effective date [April 1, 1997] of §307 of Division C of P.L. 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of P.L. 104-208);

4. - 5. ...

6. an alien who is the victim of a severe form of trafficking in persons.

B. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33, P.L. 105-185, and P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711 (April 1999), amended LR 28:

**Subpart 13. Kinship Care Subsidy Program (KCSP)  
Chapter 53. Application, Eligibility, and Furnishing Assistance**

**Subchapter B. Conditions of Eligibility**

**§5323. Citizenship**

A. Each KCSP recipient must be a United States citizen, a non-citizen national, or a qualified alien. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. A qualified alien is:

1. - 4. ...

5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-208);

6. - 8.b. ...

c. cancellation of removal under Section 1229b of the INA (as in effect prior to April 1, 1997); or

d. ...

e. cancellation of removal pursuant to section 1229b(b)(2) of the INA;

9. an alien child of a battered parent or the alien parent of a battered child as described in §1223A.8; or

10. an alien who is a victim of a severe form of trafficking in persons.

B. Time-limited Benefits. A qualified alien who enters the United States on or after August 22, 1996 is ineligible for five years from the date of entry into the United States unless:

1. - 2. ...

3. the alien's deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date [April 1, 1997] 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. ...

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

6. - 7. ...

8. the alien is a victim of a severe form of trafficking in persons.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:352 (February 2000), amended LR 27:2264 (December 2001), LR 28:

**Family Impact Statement**

This rule will generally have no effect on the functioning of the family or on parental authority. It would have a positive impact on the family budget and stability by allowing certain non-citizens (victims of a severe form of trafficking in persons) who might have natural or custodial children to receive FITAP, KCSP, and/or Food Stamp benefits.

Interested persons may submit written comments by May 29, 2002, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065. She is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed rule will be held on May 29, 2002, 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 area code 225-342-4120 (voice and TDD).

Gwendolyn P. Hamilton  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: TANF ReviewC Aliens**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule could result in an increase in state costs due to the eligibility of qualified aliens who are victims of trafficking in persons. Based on information regarding populations and percentages, it is projected that state program costs could increase in FY 02/03 and subsequent years as follows: \$10,771 in Family Independence Temporary Assistance Program (FITAP) funds, \$2,664 in Kinship Care Subsidy Program (KCSP) funds, and \$93,636 in federal Food Stamp Program benefits. FITAP and KCSP benefits would be paid from the Louisiana Temporary Assistance for Needy Families (TANF) Block Grant which is federally funded. The minimal cost of publishing the rule and printing policy changes is expected to be approximately \$465. There will be no costs to local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no impact on revenue collections for state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Qualified aliens who meet the definition of "victim of a severe form of trafficking in persons" could be eligible for benefits from one or more OFS programs. Total economic benefits awarded in Louisiana are projected to be as much as \$107,071 per year in food stamps and FITAP and KCSP benefits. Non-governmental groups will be unaffected by this rule.



IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

The proposed rule will have no impact on competition and employment.

Ann S. Williamson  
Assistant Secretary  
0204#070

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of the Secretary  
Bureau of Licensing**

Class "A" Child Day Care (LAC 48:1.Chapter 53)

The Department of Social Services, Office of the Secretary, Bureau of Licensing proposes to amend the Louisiana Administrative Code, Title 48, Part I, Subpart 3, Licensing and Certification. This Rule is mandated by R.S. 46:1401 et seq. These standards are being revised to supersede any previous regulations heretofore published.

**Title 48**

**PUBLIC HEALTHC GENERAL**

**Part 1. General Administration**

**Subpart 3. Licensing and Certification**

**§5301. Purpose**

A. It is the intent of the legislature to protect the health, safety, and well-being of the children of the state who are in out-of-home care on a regular or consistent basis. Toward that end, it is the purpose of Chapter 14 of Title 46 of the Louisiana Revised Statutes of 1950 to establish statewide minimum standards for the safety and well-being of children, to insure maintenance of these standards, and to regulate conditions in these facilities through a program of licensing. It shall be the policy of the state to insure protection of all individuals under care in child care facilities and placement agencies and to encourage and assist in the improvement of programs. It is the further intent of the legislature that the freedom of religion of all citizens shall be inviolate. This Chapter shall not give the Department of Social Services jurisdiction or authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any curriculum or instruction of a school or facility sponsored by a church or religious organization so long as the civil and human rights of the clients and residents are not violated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), amended LR 24:2345 (December 1998), LR 28:

**§5302. Authority**

**A. Legislative Provisions**

1. The state of Louisiana, Department of Social Services, is charged with the responsibility for developing and publishing standards for the licensing of child care providers. The licensing authority of the Department of Social Services is established by R.S. 46:1401 et seq. (Act 367 of 1956 and amended by Act 152 of 1962, Act 241 of

1968, Act 290 of 1976, Act 678 of 1977, Act 409 of 1978, Act 286 of 1985, Act 1463 of 1997 and Act 1237 of 1999) making mandatory the licensing of all child care facilities and child placing agencies, including child care providers.

2. In accordance with Act 1237 of the 1999 Legislative Session, a child care center is defined as any place or facility operated by any institution, society, agency, corporation, person or persons, or any other group for the primary purpose of providing care, supervision, and guidance of seven or more children, not including those related to the caregiver, unaccompanied by parent or guardian, on a regular basis for at least 12 1/2 hours in a continuous seven-day week. Related or relative is defined as the natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver. A recognized religious organization which is qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code and does not operate more than 24 hours in a continuous 7-day week is not considered a child care center.

**B. Penalties**

1. All child care facilities, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency, shall be licensed.

2. The law provides a penalty for operation of a center without a valid license. The penalty for operation without a valid license is a fine of not less than \$75 nor more than \$250 for each day of operation without a license.

**C. 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 child care facilities and child-placing agencies subject to the provisions of the Chapter (R.S. 46:1401 et seq.)

2. Whenever the department is advised or has reason to believe that any person, agency or organization is operating a non-exempt child care facility without a 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 Child Care Class "A" Minimum Standards, the department shall complete a complaint investigation. All reports of mistreatment of children coming to the attention of the Department of Social Services will be investigated.

**D. The Louisiana Advisory Committee**

1. The Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies was created by Act 286 of 1985 to serve three functions:

a. to develop new minimum standards for licensure of Class "A" facilities. ("New" meaning the first regulations written after Act 286 of 1985.);

b. to review and consult with the Department of Social Services on all revisions written by the Bureau of Licensing after the initial regulations and to review all standards, rules, and regulations for Class "A" facilities at least every three years;

c. to advise and consult with the Department of Social Services on matters pertaining to decisions to deny, revoke or refuse a Class "A" license.

2. The committee is composed of 19 voting members, appointed by the governor, including provider and consumer representation from all types of child care services, the educational and professional community and the director of the Bureau of Licensing who serves as an ex-officio member.

E. Waivers. 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 staff and/or children 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### §5303. Procedures

#### A. Initial Application

1. Anyone applying for a license after the effective date of these standards shall meet all of the requirements herein.

2. Before beginning operation, it is mandatory to obtain a license from the Department of Social Services, Bureau of Licensing. To do so, the following steps should be followed.

a. Prior to purchasing, leasing, etc., carefully check all local zoning and building ordinances in the area where you are planning to locate. Standards from Office of Public Health, Sanitarian Services; Office of the State Fire Marshal, Code Enforcement and Building Safety; and City Fire Department (if applicable) should be obtained.

b. After securing building, obtain an application form issued by:

Department of Social Services  
Bureau of Licensing  
P. O. Box 3078  
Baton Rouge, LA 70821-3078  
Phone: (225) 922-0015  
Fax: (225) 922-0014  
Web address: [www.dss.state.la.us/offos/html/licensing.html](http://www.dss.state.la.us/offos/html/licensing.html)

c. The completed application shall indicate Class "A" license. Anyone applying for state or federal funding shall apply for Class "A" license. Licensure fees are required to be paid by all providers. A Class "A" license may not be changed to a Class "B" license if revocation procedures are pending.

d. After the center's location has been established, complete and return the application form. It is necessary to contact the following offices prior to building or renovating a center:

- i. Office of Public Health, Sanitarian Services;
- ii. Office of the State Fire Marshal, Code Enforcement and Building Safety;
- iii. office of city fire department (if applicable);
- iv. zoning department (if applicable);
- v. city or parish building permit office.

e. After the application has been received by the Bureau of Licensing, the bureau will request the Office of State Fire Marshal, office of city fire department (if applicable), Office of Public Health and any known required local agencies to make an inspection of the location, as per their standards. However, it is the applicant's responsibility to obtain these inspections and approvals. A licensing specialist will visit the center to conduct a licensing survey.

f. A license will be issued on an initial application when the following items have been met and written verification is received by the Bureau of Licensing:

- i. fire approval(state and city, if applicable);
- ii. health approval;
- iii. zoning (if applicable);
- iv. full licensure fee paid;
- v. director meets qualifications;
- vi. director designee meets qualifications (if applicable);
- vii. three positive, currently signed references on director;
- viii. three positive, currently signed references on director designee, (if applicable);
- ix. licensure survey verifying compliance with all minimum standards.

3. When a center changes location, it is considered a new operation and a new application and fee for licensure shall be submitted. All items listed in §5303.A.2.f shall be submitted, except references and director qualifications if the director remains the same.

#### 4. Change of Ownership Documentation

a. When a center changes ownership, the following information must be submitted prior to receiving a license:

- i. a new application; (submitted prior to the sale or day of sale);
- ii. full licensure fee;
- iii. current health, state fire, city fire (if applicable);
- iv. letter from previous owner;
- v. documentation of director qualifications as listed in §5309.A and B;
- vi. three positive currently signed references on the director;
- vii. appropriate information on the director designee, is applicable; and
- viii. copy of bill of sale.

b. If the above information is not received in the specified timeframe, the new owner must not operate until a license is issued and will be treated as an initial application rather than a change of ownership.

5. A license shall be issued only for the address on the application to a particular owner and is not transferable to another person or location or subject to sale. Two licenses shall not be issued simultaneously for the same physical address.

6. When a center is sold, discontinued, the operation has moved to a new location or the license has been revoked, the current license immediately becomes null and void.

7. All new construction or renovation of a center requires approval from agencies listed in §5303.A.2.d and the Bureau of Licensing prior to occupying the new space.

8. The bureau 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 unless it is revoked due to provider's failure to maintain compliance with minimum standards.

**B. Fees**

1. An application fee of \$25 shall be submitted with all initial applications. This fee will be applied toward the total licensure fee which is due prior to licensure of the center. This fee is to be paid by all initial and change of location providers. The full licensure fee shall be paid on all Changes of Ownership. All fees shall be paid by certified check or money order only and are non-refundable.

2. Annual licensure fees are required prior to renewal of the license. License fee schedules (based on capacity) are listed below:

15 or fewer:	\$ 25
16-50:	\$100
51-100:	\$175
101 or more:	\$250

**3. Other Licensure Fees**

a. \$25 replacement fee for any provider replacing a license when changes to the license are requested, i.e., change in capacity, name change, age range change. (There is no processing charge when the request coincides with regular renewal of license.)

b. \$5 processing fee for issuing a duplicate license with no changes.

**C. Relicensing**

1. The relicensing survey is similar to the original licensing survey. Documentation of the previous 12 months' activity shall be available for review. The director will have an opportunity to review the survey deficiencies (if any).

2. 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, re-inspections by the Office of Public Health, Sanitarian Services; Office of the State Fire Marshal, Code Enforcement and Building Safety; city fire (if applicable) and the Bureau of Licensing shall be required.

3. If the survey reveals that the provider is not meeting minimum requirements, a recommendation will be made that the license be revoked or not renewed.

4. The bureau shall be notified prior to making changes which may have an effect upon the license, i.e., age range of children served, usage of indoor and outdoor space, director, hours/months/days of operation, transportation, etc.

**D. Denial, Revocation or Non-Renewal 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. 46:1401 et seq. 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 children;

3. conviction of a felony or any offense of a violent or sexual nature or any offense involving a juvenile victim, as shown by a certified copy of the record of the court of conviction, of the applicant;

a. or, if the applicant is a firm or corporation, any of its board members or officers;

b. or of the person designated to manage or supervise the center;

4. hiring or continued employment of any individual (paid or non-paid staff) convicted of a felony or any offense of a violent or sexual nature or any offense involving a juvenile victim, as shown by a certified copy of the record of the court of conviction;

5. if the director of the center is not reputable;

6. if the director or a member of the staff is temperamentally or otherwise unsuited for the care of the children in the center;

7. history of noncompliance;

8. failure of the owner of the center to hire a qualified director;

9. disapproval from any agency whose approval is required for licensure;

10. non-payment of licensure fee and/or failure to submit an application for renewal prior to the expiration of the current license;

11. any validated instance of corporal punishment, physical punishment, cruel, severe, or unusual punishment, physical or sexual abuse and/or neglect if the owner is responsible or if the employee who is responsible remains in the employment of the center;

12. the center is closed with no plans for re-opening and no means of verifying compliance with minimum standards for licensure;

13. any act of fraud such as falsifying or altering documents required for licensure;

14. provider refuses to allow the bureau to perform mandated duties, i.e., denying entrance to the center, lack of cooperation for completion of duties, etc.;

15. recalled products (presence or use of any product by the provider that is listed in the newsletter issued by the attorney general's office).

**E. Appeal Procedure.** If the license is refused, revoked or denied because the provider does not ensure the compliance with the minimum requirements for licensure, the procedure is as follows.

1. The Department of Social Services, Bureau of Licensing, shall advise the director by certified letter of the reasons for refusal, revocation or denial and the right of appeal.

2. The director 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, Bureau of Appeals, P.O. Box 2944, Baton Rouge, LA 70821-9118. This written request shall be post-marked within 30 days of the director's receipt of the above notification.

3. The Bureau of Appeals shall set a hearing within 30 days after receipt of such a request. An Appeals Hearing Officer shall conduct the hearing. The Hearing Officer shall advise the appellant by certified letter of the decision, either affirming or reversing the original decision. If the appeal is denied, the provider shall terminate operation of the center immediately.

4. If the provider continues to operate without a license, the Department of Social Services may file suit in the district court in the parish in which the center is located for injunctive relief.

F. Required Notification. The director shall notify the bureau within 24 hours or the next workday the following reportable incidents. A verbal report is to be followed by a written report:

1. any death of a child while in the care of the provider;
2. any illness or injury requiring hospitalization or professional medical attention other than first aid of a child while in the care of the provider;
3. any fire;
4. any structural disaster;
5. any emergency situation that requires temporarily relocating children;
6. any unusual situation which would affect the care of the children, i.e., extended loss of power, water service, gas, etc.;
7. any child leaving the center unsupervised or with an unauthorized person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

#### §5304. Definitions

**Anniversary**Cprovider's licensure year, determined by the month in which the initial license was issued to the provider/center and in which the license is eligible for renewal each year.

**Bureau**Cthe Bureau of Licensing of the Department of Social Services.

**Capacity**Cthe number of children the provider is licensed to care for at any given time based on usable indoor and outdoor square footage as determined by the bureau.

**Center**Ca child care facility as defined in §5302.A.1.

**Center Staff**Call full or part-time paid or non-paid staff who perform routine services for the child care center and have direct or indirect contact with children at the center. Center staff includes the director, child care staff, and any other employees of the center such as the cook, housekeeper, driver, substitutes, and foster grandparents excluding extra-curricular personnel.

**Change of Location**Cprovider moves from one physical address to another.

**Change of Ownership**Ctransfer of ownership to someone other than the owner listed on the initial application. Ownership of the center business, not the building, determines the owner. Sale of a corporation also constitutes a change of ownership. Leasing of a child care business is not considered a change of ownership.

**Clock Hour**Cinvolvement or participation in a learning situation for 60 minutes.

**Comparable Setting**Cpre-k, kindergarten, first grade, or a registered family day home.

**Contract Person**Ca third party with whom parents have a written agreement.

**Department**Cthe Department of Social Services of the State of Louisiana.

**Direct Supervision**Cvisual contact at all times.

**Director**C

**Executive Director**Cthe owner or administrator. If on-site and responsible for the management, administration and supervision of the center, the executive director is also the center director. If not on-site or not functioning as center director, the executive director maintains responsibility for the management, administration and supervision of the center(s) through a center director or director designee.

**Center Director**Cthe on-site staff who is responsible for the day-to-day operation of the center as recorded with the Bureau of Licensing. For the purpose of these regulations the term *director* means *center director* or *director designee*, if applicable.

**Director Designee**Cthe on-site individual appointed by the director when the director is not an on-site employee at the licensed location. This individual shall meet director qualifications.

**Discipline**Cthe ongoing positive process of helping children develop inner control so that they can manage their own behavior in an appropriate and acceptable manner by using corrective action to change the inappropriate behavior.

**Documentation**Cwritten evidence or proof, signed and dated by parties involved (director, parents, staff, etc.), on site and available for review.

**Existing Center**Ca center with a valid license prior to the effective date of these standards.

**Extra-Curricular Personnel**Cindividuals who are not employees of the center, but who come to the center to provide therapy, services, or enrichment activities for an individual child or group of children. Examples: computer instructor, dance instructor, librarian, tumble bus personnel, therapeutic personnel (occupational therapist, physical therapist, speech therapist), nutritionist, early interventionist, nurse.

**Group**Cthe number of children assigned to a caregiver or team of caregivers occupying an individual classroom or well defined space within a larger room on a consistent or daily basis.

**Medication**Call internal and external drugs, whether over the counter or prescribed. Medications include oral, inhalant, topical ointments, sprays, creams, etc.

**Montessori School**Ca facility accredited as a Montessori School by the Board of Elementary and Secondary Education under R.S. 17:3401 et. seq.

**Nighttime Care**Ccare provided after 9 p.m. and in which no individual child remains for more than 24 hours in one continuous stay.

**Owner or Provider**Ca public or private organization or individual who delivers child care services for children.

**Parent**Cparent(s) or guardian with legal custody of the child.

**Posted**Cdisplayed in a conspicuous location in an area accessible to and regularly used by parents.

**Shall or Must**Cmandatory.

**Should**Curged, advised or may.

**Staff-in-Charge**Cthe on-site staff appointed by the director as responsible for supervising the operation of the center during the temporary absence of the director.

**Student Trainee**Can individual who attends an institute of higher learning and observes in the child care center as a course requirement.

**Temporary Absence**Cabsence for errands, conferences, etc.

**Transportation** Arranging or providing transportation of children for any reason including field trips and transportation by contract.

**Volunteers** Non-paid individuals who are not left alone with children, not counted in child/staff ratio, in center less than 10 days per calendar year.

**Water Activity** A water-related activity where children, under adult supervision, are in, on, near, or immersed in a body of water such as swimming pools, wading pools, water parks, lakes, rivers or beaches, etc.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1401 et seq.

**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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### **§5305. General Requirements**

A. The director shall be responsible for ensuring that minimum licensing requirements are met.

B. A Louisiana child care license with current information and current expiration date shall be on display in an area accessible to the view of parents and visitors, except for church affiliated centers (R.S. 46:1408.D) that choose to keep the license on file and available upon request.

C. Provider shall maintain in force at all times current commercial liability insurance for the operation of a center to ensure medical coverage for children in the event of accident or injury. The provider is responsible for payment of medical expenses of a child injured while in the provider's care. Documentation shall consist of the insurance policy or current binder that includes the name of the child care facility, name of the insurance company, policy number, period of coverage and explanation of the coverage.

D. Parents shall not be required to waive the provider's responsibility.

E. Provider shall have documentation of yearly health or sanitary inspection and current approval from the Office of Public Health, Sanitarian Services.

F. Provider shall have documentation of yearly safety inspection and current approval from the Office of State Fire Marshal.

G. Provider shall have documentation of yearly safety inspection and current approval from the City Fire Department (if applicable).

H. Provider shall have certificate of occupancy (zoning) if applicable.

I. A daily attendance record for children, completed by the parent or center staff, including the time of arrival and departure of each child and the full name of the person to whom the child was released shall be maintained. Initials shall not be used. If the record is completed by center staff, that individual shall write the full name of the person to whom the child was released and sign his/her own name. Children who leave and return to the center during the day shall be signed in/out. A computer sign in/out procedure is acceptable if the record accurately reflects the time of arrival and departure as well as the name of the person to whom the child was released. This record shall accurately reflect the children on the childcare premises at any given time.

J. A daily attendance record for staff, including the director/owner, to include the time of arrival and departure

shall be maintained. Staff shall document in/out when not on the child care premises. This record shall accurately reflect persons on the childcare premises at any given time.

K. The provider shall have an individual immediately available in case of emergency to ensure adequate child/staff ratios and supervision. The name and telephone number of the emergency person shall be posted near the telephone.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1401 et seq.

**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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### **§5306. Policies and Procedures Related to Children**

A. The provider shall have written policies that address admission and all reasons for expulsion of a child from the center.

B. The provider shall have a written description of its program, fees, and planned dates of closure.

C. The provider's written policies shall be available for review by parents, staff, and state agencies. Provider shall have documentation that parents have reviewed or have been given a written description of the center's program and policies.

D. Prior to admission, the director, in consultation with the parent, shall determine that individual needs of each child can adequately be met by the center's program and facilities.

E. There shall be a posted schedule of the day's plan of activities, allowing for flexibility and change. The program of activities shall be age-appropriate, and shall be adhered to with reasonable closeness, but shall accommodate and have due regard for individual needs and differences among the children. The program shall provide time and materials for both vigorous and quiet activities for children to share or to be alone, indoor and outdoor play and rest. Regular time shall be allowed for routines such as washing, lunch, rest, snacks and putting away toys. Active and quiet periods shall be alternated so as to guard against over stimulation of the child.

F. Children 5 years and younger shall have a daily rest period of at least one hour. Providers serve children in half-day programs are not required to schedule napping periods for these children.

G. While awake, infants and one year old children shall not remain in a crib/baby bed, swing, highchair, carrier, playpen, etc., for more than 30 consecutive minutes.

H. Discipline. Provider shall establish a policy in regard to methods of discipline. Any form of punishment that violates the spirit of this standard of discipline, even though it may not be specifically mentioned as forbidden, is prohibited. This written, separately posted policy shall clearly state all types of positive discipline that are used and that the following methods of discipline are prohibited.

1. No child shall be subject to physical punishment, corporal punishment, verbal abuse or threats.

2. Cruel, severe, unusual or unnecessary punishment shall not be inflicted upon children.

3. Derogatory remarks shall not be made in the presence of children about family members of children in care or about the children themselves.

4. No child or group of children shall be allowed to discipline another child.

5. When a child is removed from the group for disciplinary reasons, he shall never be out of sight of a staff member.

6. No child shall be deprived of meals or snacks or any part thereof for disciplinary reasons.

I. Abuse And Neglect. As mandated reporters, all center staff shall report any suspected abuse and/or neglect of a child in accordance with R.S. 14:403 to the local Child Protection Agency. This statement as well as the local Child Protection Agency's telephone number shall be posted separately.

J. Complaint Procedure. Parents shall be advised of the licensing authority of the bureau along with the current telephone number and address. Parents shall also be advised that they may call or write the bureau should they have significant, unresolved licensing complaints. The current telephone number and address of the bureau shall be posted separately in a conspicuous location in an area accessible to parents.

K. Open Door Policy. Parents shall be informed that they are welcome to visit the center anytime during regular hours of operation as long as their child is enrolled. The written policy shall be posted separately.

L. Non-Discrimination Policy. Discrimination by child care providers on the basis of race, color, creed, sex, national origin, handicapping condition or ancestry is prohibited. The written policy shall be posted separately.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### **§5307. Children's Records**

A. A record shall be maintained on each child to include:

1. child's information form (mastercard) with the following information, e.g. name, birth date, sex, date of admission, name and phone number of child's physician and dentist, dietary restrictions and allergies; signed and dated by the parent;

2. parental authorization to administer and/or secure emergency medical treatment;

3. signed agreements between the provider and the parent for each child giving permission to release the child to a third party listed by the parent including the non-custodial parent(s), or any other child care facilities, transportation services. A child shall never be released to anyone unless authorized in writing by the parent.

B. Provider shall maintain the confidentiality and security of all children's records. Employees of the center shall not disclose or knowingly permit the disclosure of any information concerning the child or his/her family, directly, or indirectly, to any unauthorized person.

C. Provider shall obtain written, informed consent from the parent prior to releasing any information, recordings and/or photographs from which the child might be identified, except for authorized state and federal agencies. Provider utilizing any type of recordings or taping of children to include but not limited to digital recordings, videotaping,

audio recordings, web cam, etc., shall obtain documentation signed and dated by the parent indicating their awareness of such recordings.

D. For licensing purposes, children's records shall be kept on file a minimum of one year from date of discharge from the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### **§5308. Required Staff**

A. Each center shall have a qualified director who is an on-site full time employee at the licensed location and is responsible for planning, managing, and controlling the center's daily activities, as well as responding to parental concerns and ensuring that minimum licensing requirements are met. When the director is not an on-site full time employee at the licensed location, there shall be a qualified director designee who is an on-site full time employee responsible for planning, managing, and controlling the center's daily activities, as well as responding to parental concerns and ensuring that minimum licensing requirements are met.

B. When the director or director designee is not on the premises due to a temporary absence, there shall be an individual appointed as Staff-in-Charge who is at least 21 years of age. This staff shall be given the authority to respond to emergencies, inspections/inspectors, and parental concerns and have access to all required information.

C. If the number of children in care exceeds 42, the director/director designee's duties shall consist only of performing administrative functions.

D. There shall be regularly employed staff who are capable of fulfilling job duties of the position to which they are assigned.

E. There shall be adequate provisions for cooking and housekeeping duties, except for those centers approved by the Office of Public Health, Sanitarian Services to have food catered from an approved source. These duties shall not interfere with required supervision of children or required child/staff ratios.

F. If day and nighttime care are offered, there shall be separate shifts of staff. No employee may work day and night shifts consecutively.

G. There shall be provisions for substitute staff who are qualified to fulfill duties of the position to which they are assigned.

H. Child care staff shall be age 18 years or older. The provider may, however, include in the staff-child ratio, a person 16 or 17 years old who works under the direct supervision of a qualified adult staff. No one under age 16 shall be used as child care staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### §5309. Director Qualifications

A. The director/director designee shall be at least 21 years of age.

B. The director/director designee shall have documentation of at least one of the following upon date of hire as director or director designee:

1. a bachelor's degree from an accredited college or university with at least 12 credit hours of child development or early childhood education and one year of experience in a licensed child care center or comparable setting, subject to approval by the bureau;

2. an associate of arts degree in child development or a closely related area, and one year of experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

3. a National Administrator Credential as awarded by the National Child Care Association, and one year experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

4. a Child Development Associate Credential, (CDA), and one year of experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

5. diploma from a post secondary technical early childhood education training program approved by the Board of Elementary and Secondary Education, or child care education certificate program, plus one year of experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

6. three years of experience as a director or staff in a licensed child care center, or comparable setting, subject to approval by the bureau; plus six credit hours in child care, child development, or early childhood education or 90 clock hours of training approved by the bureau. Up to three credit hours or 45 clock hours may be in management/administration education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### §5310. Personnel Records

A. There shall be a record for each paid and non-paid staff person, including substitutes and foster grandparents on file at the center. Personnel record shall include:

1. an application and/or a staff information form with the following:

- a. name;
- b. date of birth;
- c. address and telephone number;
- d. previous training/work experience;
- e. educational background;
- f. employee's starting and termination date;

2. documentation of three positive reference checks or telephone notes signed and dated. These references shall be obtained from persons not related to the employee;

3. written job descriptions for every position at the center. Job description to include: duties to be performed, hours of work, and supervisor;

4. a written statement of good health signed by a physician or designee. Health statement dated within three

months prior to offer of employment or within one month after date of employment is acceptable. A health statement is required every three years. Originals shall be presented upon request;

5. documentation of a satisfactory criminal record check, as required by R.S. 15:587.1. Provider shall request this clearance prior to the employment of any center staff. A criminal record clearance is not transferable from one employer to another. No staff with a criminal conviction of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim, shall be employed in a Class A child care center unless approved in writing by a district judge of the parish and the local district attorney. A copy of this approval must remain on file in the center and a copy must be submitted to the bureau.

B. The following information shall be kept on file for extracurricular personnel, i.e. computer instructor, dance instructor, librarian, tumble bus personnel and therapeutic professionals:

1. a written statement of good health signed by a physician or designee. A health statement is required every three years;

2. documentation of a satisfactory criminal record check, as required by R.S. 15:587.1. Provider shall obtain this clearance prior to individual being present in the center. No individual with a criminal conviction of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim, shall be in a Class A child care center unless approved in writing by a district judge of the parish and the local district attorney. A copy of this approval must remain on file in the center and a copy must be submitted to the bureau.

C. The following information shall be kept on file at the center for each student trainee:

1. an application and/or a staff information form with the following:

- a. name;
- b. date of birth;
- c. address and telephone number;
- d. first and last date in center;

2. written job descriptions to include: duties to be performed, hours of work, and supervisor;

3. a written statement of good health signed by a physician or designee. A health statement dated within three months prior to the training start date or within one month after training begins is acceptable. Health statement is required every three years. Originals shall be presented upon request;

4. documentation of a satisfactory criminal record check, as required by R.S. 15:587.1 must be obtained if the student trainee has supervisory or disciplinary authority over children. Provider shall request this clearance prior to the training start date. A criminal record clearance is not transferable from one provider to another. No student trainee with a criminal conviction of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim shall be in a Class A child care center unless approved in writing by a District Judge of the parish and the local District Attorney. A copy of this approval must remain on file in the center and a copy must be submitted to the bureau.

D. All visitors to the center shall have the following information on file:

1. name;
2. address/agency affiliation;
3. date of visit;
4. arrival and departure time;
5. reason/interest in center.

E. For licensing purposes, personnel records shall be kept on file a minimum of one year from termination of employment from the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### **§5311. Staff Development and Training**

#### **A. Orientation Training**

1. Within one week of employment and prior to having sole responsibility for a group of children, each staff member, including substitutes and foster grandparents, shall receive orientation training to include the following topics:

- a. center policies and practices including health and safety procedures;
- b. emergency and evacuation plan;
- c. supervision of children;
- d. discipline policy;
- e. job description;
- f. individual needs of the children enrolled;
- g. detecting and reporting child abuse and neglect;
- h. current Child Care Class "A" Minimum

Licensing Standards;

- i. confidentiality of information regarding children and their families.

2. This training shall be followed by four days of supervised work with children. Documentation shall consist of a statement/checklist in the staff record signed and dated by the staff person and director, attesting to having received such orientation training, and the dates of the supervised work with children.

B. Quarterly Training. The director shall conduct, at a minimum, one staff training session every three months. Documentation shall consist of the date of the training session, training topics and signatures, (not initials), of all staff in attendance.

C. Annual Review. All staff, including substitutes and foster grandparents, shall have a signed and dated checklist/statement that the following topics are annually reviewed:

1. center policies and practices including health and safety procedures;
2. emergency and evacuation plan;
3. supervision of children;
4. discipline policy;
5. job description;
6. individual needs of the children enrolled;
7. detecting and reporting child abuse and neglect;
8. current State Class A Minimum Licensing

Standards;

9. confidentiality of information regarding children and their families.

#### **D. Continuing Education**

1. The director shall provide opportunities for continuing education of staff through attendance at child care workshops or conferences, for paid and non-paid staff who are left alone with children, or who have supervisory or disciplinary authority over children. The child care staff shall obtain 12 clock hours of training per center's anniversary year in job related subject areas. At least 3 of the 12 clock hours of training for directors/director designees shall be in administrative issues. Documentation shall consist of attendance records or certificates received by staff. This is in addition to the required training hours from the Department of Health and Hospitals, Pediatric First Aid and Infant/Child/Adult CPR. This training shall be approved by the Department of Social Services. Original certificates shall be made available upon request.

2. Cooks, drivers, and other ancillary personnel who are neither left alone with children, nor have supervisory nor disciplinary authority over children shall complete at least three clock hours of training in job related topics per center's anniversary year.

#### **E. CPR and First Aid**

1. There shall be a minimum of at least 50 percent of all staff on the premises and accessible to the children at all times with current Infant/Child/Adult training in CPR. Original cards shall be made available upon request. This training shall be approved by the Department of Social Services.

2. Centers with multiple buildings or floors, however, shall have at least one currently trained staff in approved Infant/Child/Adult CPR in each building and on each floor of the center.

3. There shall be a minimum of at least 50 percent of all staff on the premises and accessible to children with current Pediatric First Aid training. Original cards shall be made available upon request. This training shall be approved by the Department of Social Services.

4. Centers with multiple buildings or floors, however, shall have at least one currently trained staff in approved Pediatric First Aid in each building and on each floor of the center.

F. Emergency Procedures. The director shall ensure that there are written procedures for emergencies and evacuation as appropriate for the area in which the center is located such as fire, flood, tornado, hurricane, chemical spill, train derailment, etc., and that staff are trained in these procedures.

NOTE: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### **§5313. Water Activities**

A. Provider shall have a written statement if water activities are not provided.

B. The provider shall obtain written authorization signed by the parent in order for the child to participate in any water activity. The statement shall describe all types of water activities provided and the authorization shall be updated at least annually and shall list the child's name, type of water



activity, location of water activity, parent's signature and date.

C. On-site and off-site wading/swimming pool, or other water activities shall require at least two staff or other supervising adults to be trained in Infant/Child/Adult CPR and pediatric first aid. One supervising adult shall be trained in an approved Community Water Safety course. Providers who have wading pools with a depth of less than 2 feet shall not be required to have a staff with Community Water Safety training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### §5315. Required Child/Staff Ratios

A. Child/staff ratios are established to ensure the safety of all children.

B. Required staff shall be present in the center to meet the child/staff ratios as indicated below; however there shall always be a minimum of two child care staff present during hours of operation when children are present:

Ages of Children	Child/Staff Ratio
Infants under 12 months	5:1
1 year old	7:1
2 years old	11:1
3 years old	13:1
4 years old	15:1
5 years old	19:1
6 years old and up	23:1

C. An average of the child/staff ratio may be applied to mixed groups of children ages 2, 3, 4, and 5. Ratios for children under 2 or over 5 years old are excluded from averaging. When a mixed group includes children less than 2 years of age, the age of the youngest child determines the ratio for the group to which the youngest child is assigned. When a mixed group includes children 6 years old and older, the ages of the children less than 6 determine the ratio for the group.

D. During naptime, required staffing shall be present in the center to satisfy child/staff ratios.

E. Only those staff members directly involved in child care and supervision shall be considered in assessing child/staff ratio.

F. Child/staff ratio plus one additional adult shall be met for all off-site activities.

G. A designated number of children shall relate daily to a designated staff on a regular and consistent basis.

H. When the nature of a special need or the number of children with special needs warrants added care, the provider shall add sufficient staff as deemed necessary by the bureau to compensate for these needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### §5317. Food Service and Nutrition

A. Well-balanced and nourishing meals and snacks shall be provided as specified under the Child Care Food Program of the United States Department of Agriculture (See Appendix A).

B. Additional servings of nutritious food over and above the required daily minimum shall be made available to children as needed if not contraindicated by special diets.

C. Meals and snacks shall be served at 22 1/2 hour intervals.

D. Current weekly menus for meals and snacks listing specific food items served shall be prominently posted. Menu substitutions shall be recorded on or near the posted menu.

E. Children's food shall be served on individual plates, napkins, paper towels or in cups as appropriate.

F. Providers who do not serve breakfast shall have food available for children arriving in the morning without having eaten this meal.

G. Food shall not be sold to the children. Soft drink vending machines and other food dispensers for personnel use shall be located outside of the children's play areas.

H. Infants shall be held while being bottle-fed. An infant or any child who can hold a bottle shall not be placed in a crib, on a mat, cot, etc. with the bottle unless written permission is obtained from the parent.

I. A bottle shall not be propped at any time.

J. Current written feeding instructions shall be given to the provider by the parent. These instructions from the parent or physician shall be kept on file and followed.

K. Microwave ovens shall not be used for warming infant bottles or infant food.

L. Developmentally appropriate equipment shall be used at mealtimes, such as feeding tables, highchairs, etc.

M. Drinking water shall be available indoors and outdoors to all children. Drinking water shall be offered at least once between meals and snacks to all children. Water given to infants shall be in accordance with written instructions from parents.

N. Perishable food shall be refrigerated at 41° Fahrenheit or below as registered on a thermometer.

O. Children are not allowed to bring food into the center except under the following circumstances.

1. Bottled formula for infants supplied by the parent shall have labeled bottles and labeled caps/covers with the child's name or initials and refrigerated upon arrival.

2. Baby food supplied by the parent shall be in the original unopened container and labeled with the child's name or initials.

3. When a child requires a special diet, a written statement from a medical authority shall be on file.

4. Children with food allergies/intolerance shall have a written statement signed by the parent indicating the specific food allergy/intolerance.

5. When a child requires a modified diet for religious reasons, a written statement to that effect from the child's parent shall be on file.

6. Refreshments for special occasions such as birthday parties and holidays, with prior approval from the director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

**§5319. Health Service to the Child**

A. A provider that gives medication assumes additional responsibility and liability for the safety of the children.

B. Provider shall have a written statement if medication is not administered.

C. Effective January 1, 2003, the staff person administering medication shall be trained in medication administration by a child care health consultant. Documentation of training shall be available for review.

D. No medication of any type, prescription, non-prescription, special medical procedure shall be administered by center staff unless authorized in writing by the parent. Authorization shall include:

1. child's name;
2. name of the medication;
3. date(s) to be administered;
4. dosage;
5. time to be administered;
6. special instructions, if applicable;
7. side effects;
8. signature of parent and date of signature;
9. circumstances for administering as needed medication.

E. Medication or medical procedures to be provided on an as needed basis or maintenance prescription shall be updated as changes occur, or at least every three months by the parent.

F. All medication sent to the center shall be in its original container, shall not have an expired date, and shall be clearly labeled with the child's name to ensure that medication is for individual use only.

G. The provider shall follow any special directions as indicated on the medication bottle, i.e., before or after meals, with food or milk, refrigerate, etc.

H. If medication label reads "to consult physician," a written physician authorization with child's name, date, medication name and dosage must be on file in order to administer the medication in addition to the parental authorization.

I. Medication administration records shall be maintained verifying that the medication was given according to parent's authorization, which includes:

1. the date;
2. time;
3. dosage administered;
4. signature (not initials) of the staff member who gave the medication;
5. phone contact (date and time) with the parent prior to giving the as needed medication.

J. Provider shall not apply topicals (i.e. sunscreen, insect repellent, diaper rash ointment, etc.) without a written one-time authorization signed and dated from the parent, unless changes occur.

K. Upon arrival at the center, each child shall be observed for possible signs of illness, infections, bruises and injuries, etc. When noted, results shall be documented. If none noted, provider shall have a daily documentation that none was observed.

L. Incident of injuries, accidents, illnesses or unusual occurrences in behavior shall be documented. Documentation shall include name of child, date and time of incident, location where incident took place, description of how incident occurred, part of body involved, actions taken. The parent or designated person shall be notified immediately. Documentation shall include time of parental notification and signature of person notifying parent. If no occurrences, provider shall have weekly documentation that none occurred.

M. If symptoms of contagious or infectious disease develop while the child is in care, he/she shall be placed in isolation until a parent or designated person has been consulted. Any child who has had a 100° F oral temperature reading or 101° F rectal temperature reading the last 12 hours is suspect.

**N. Excluding Child from Facility Due to Illness**

1. A child shall be excluded from the child care facility if any of the following conditions exist:

a. temperature: oral temperature 101° F or greater, rectal temperature 102° F or greater, axillary temperature 102° F or greater, accompanied by behavior changes or other signs of symptoms of illness. The doctor or nurse should be notified;

b. symptoms and signs of possible severe illness such as unusual lethargy (sluggish), uncontrolled coughing, irritability, persistent crying, difficult breathing, wheezing or other unusual signs;

c. uncontrolled diarrhea or increased number of stools, increased stool water and/or decreased from that which is not contained by the diaper, five or more stools in an eight-hour period and/or, blood or mucus in the stool;

d. two or more episodes of vomiting in the previous twenty-four hours;

e. mouth sores with drooling;

f. rash with fever or behavior change;

g. untreated conjunctivitis (pink-eye) with purulent (white or yellow) drainage from eyes;

h. untreated infestations: scabies, head lice or other infestation;

i. tuberculosis: a child is excluded until a health care provider states that the child can attend child care;

j. impetigo: a child is excluded until 24 hours after treatment is initiated;

k. strep throat or other streptococcal infection: a child is excluded until 24 hours after initial antibiotic treatment and cessation of fever;

l. chicken pox: a child is excluded until six days after onset of rash or until all sores have dried and crusted;

m. pertussis: a child is excluded until five days of appropriate antibiotic treatment have been completed;

n. mumps: a child is excluded until nine days after onset of parotid gland swelling;

o. hepatitis A virus: a child is excluded until one week after onset of illness or as directed by a physician and health department when treatment has been administered;

p. measles: a child is excluded until six days after onset of rash;

q. rubella: a child is excluded until six days after onset of rash;

r. unspecified respiratory illness, shingles or other conditions: a child shall be excluded without sufficient documentation from the child's physician;

s. abdominal pain intermittent or persistent.

2. Children experiencing any of the above-mentioned symptoms, signs or conditions should be excluded from child care and should have documentation from the child's physician before returning to child care.

O. With most other illnesses, children have either already exposed others before becoming obviously ill (e.g., colds) or are not contagious one day after beginning treatment (e.g., strep throat, conjunctivitis, impetigo, ringworm, parasites, head lice, and scabies). The waiting periods required after the onset of treatment vary with the disease. Check with your local health department for information on specific diseases. Children who are chronic carriers of viral illnesses such as CMV (cytomegalovirus) and Herpes can and should be admitted to day care centers.

NOTE: A provider shall institute a policy of using universal precautions when activities involve contact with blood or other body fluids (such as diaper changing, cleaning up blood spills, etc.). For additional information refer to the universal precautions as required by Chapter XXI of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### §5321. Supervision

A. Children shall be under direct supervision at all times including naptime. Children shall never be left alone in any room or outdoors without a staff present. At naptime, children, excluding infants, may be grouped together with one staff supervising the children sleeping. All children sleeping shall be in the sight of the naptime worker.

B. While on duty with a group of children, child care staff shall devote their entire time in supervision of the children, in meeting the needs of the children, and in participation with them in their activities.

C. Individuals who do not serve a purpose related to the care of children and/or hinder supervision of the children shall not be present in the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### §5323. Physical Environment

#### A. Indoor Space Required

1. The center shall be used exclusively by the children and center staff during operating hours. Area licensed for use as a child care center shall not be dually licensed. A child care facility shall be physically separated from any other business or enterprise.

2. There shall be a minimum of indoor space of at least 35 square feet per child. The space shall not include toilet facilities, hallways, lofts, storage or food preparation areas, or offices. Any room counted as play space shall be

available for play during play hours. If rooms are used exclusively for dining or sleeping, they cannot be included in the licensed capacity.

3. For indoor space, the number of children using a room shall be based on the 35 square feet per child requirement except for group activities such as film viewing, parties, dining and sleeping.

4. There shall be provisions indoors for temporarily isolating a child having or suspected of having a communicable disease so he/she can be removed from the other children. Movable partitions are permissible so that the space may be used for play when not needed for isolating an ill child.

5. An indoor area shall be maintained for the purpose of providing privacy for diapering, dressing and other personal care procedures for children beyond the usual diapering age.

#### B. Outdoor Space Required

1. There shall be outdoor play space with a direct exit from the center into the outdoor play yard.

2. The outdoor space shall provide a minimum of 75 square feet for each child in the outdoor play space at any one time. The minimum outdoor play space shall be available for at least one-half of the licensed capacity.

3. The outdoor play space shall be enclosed with a fence or other barrier in such a manner as to protect the children from traffic hazards, to prevent the children from leaving the premises without proper supervision, and to prevent contact with animals or unauthorized persons.

4. Crawlspace and mechanical, electrical, or other hazardous equipment shall be made inaccessible to children.

5. Areas where there are open cisterns, wells, ditches, fish ponds and swimming pools or other bodies of water shall be made inaccessible to children by fencing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### §5325. Furnishings and Equipment

A. There shall be a functional telephone capable of incoming and outgoing calls at all times and readily available at the center. Coin operated telephones or cellular telephones are not acceptable for this purpose.

B. When a center has multiple buildings and a telephone is not located in each building where the children are housed, there shall be a written plan posted in each building for securing emergency help.

C. Appropriate emergency numbers such as fire department, police department, and medical facility shall be prominently posted on or near the telephone.

D. The telephone number for poison control shall be prominently posted on or near the telephone.

E. The center's location address shall be posted with the emergency numbers.

F. All equipment and materials shall be appropriate to the needs and ages of the children enrolled.

G. All play equipment and equipment necessary for the operation of the center shall be maintained in good repair.

H. Play equipment of sufficient quantity and variety for indoor and outdoor use encouraging physical play and quiet play/activities shall be provided which is appropriate to the needs and ages of the children.

I. Trampolines are prohibited

J. Infant walkers are prohibited.

K. There shall be low, open shelves, bins, or other open containers within easy reach of the children for the storage of play materials in each play area.

L. Toy chests with attached lids are prohibited.

M. There shall be individual, labeled space for each child's personal belongings.

N. Chairs and table space of a suitable size shall be available for each child 2 years of age or older.

O. Individual and appropriate sleeping arrangements shall be provided for each child. (State and local health requirements regarding sleeping arrangements shall be met.) Each child shall be provided with a cot, mat, or crib (baby bed) of appropriate size, height, and material, sufficient to insure his/her health and safety. Each infant shall have a crib separated from all other cribs (non-stackable). Playpens shall not be substituted for cribs.

P. Mats may be used only if the area used for napping is carpeted or if the center is centrally heated and cooled. If mats are used, they shall be of adequate size and material to provide for the health and safety of the child.

Q. Each child's sleeping accommodations shall be assigned to him/her on a permanent basis and labeled.

R. Cribs shall have spaces between crib slats of no more than 2 3/8 inches.

S. Infant bed railings shall be in the up and locked position at all times when the child is in the bed.

T. Sheets for covering the cot or mat shall be provided by either the provider or the parent, unless the cots or mats are covered with vinyl or another washable surface.

U. A labeled sheet or blanket shall be provided by either the provider or the parent for covering the child.

V. Cribs, cots, or mats shall be spaced at least 18 inches apart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### **§5327. Safety Requirements**

A. Prescription and over-the-counter medications, poisons, cleaning supplies, harmful chemicals, equipment, tools and any substance with a warning label stating it is harmful or that it should be kept out of the reach of children, shall be locked away from and inaccessible to children. Whether a cabinet or an entire room, the storage area shall be locked.

B. Refrigerated medication shall be stored in a secure container to prevent access by children and avoid contamination of food.

C. Construction, remodeling, or alterations of structures shall be done in such a manner as to prevent hazards or unsafe conditions (fumes, dust, safety hazards).

D. Secure railing shall be provided for flights of more than three steps and for porches more than 3 feet from the ground.

E. Gates shall be provided at the head or foot of each flight of stairs to which children have access.

F. Accordion gates are prohibited unless there is documentation on file that the gate meets requirements as approved by the Office of Public Health, Sanitarian Services.

G. Unused electrical outlets shall be protected by a safety plug cover.

H. Strings and cords (such as those found on window coverings) shall not be within the reach of children.

I. First aid supplies shall be kept on-site and easily accessible to employees, but not within the reach of children.

J. All areas of the center used by the children, including sleep areas, shall be properly heated, cooled, ventilated, and lighted.

K. The center and yard shall be clean and free from hazards.

L. The provider shall prohibit the use of alcohol, tobacco and the use or possession of illegal substances or unauthorized potentially toxic substances, fireworks, firearms, pellet or BB guns (loaded or unloaded) on the child care premises. A notice to this effect shall be posted separately.

M. Provider shall post "The Safety Box" newsletter issued by the attorney general's office. Director shall sign and date a statement verifying that all products listed in the newsletter are not present on the daycare premises nor used by the provider for any reason.

N. Fire drills shall be conducted at least once per month. These shall be conducted at various times of the day and night (if nighttime care is provided) and shall be documented. One fire drill every six months shall be held at naptime. Documentation shall include:

1. date and time of drill;
2. number of children present;
3. amount of time to evacuate the center;
4. problems noted during drill and corrections noted;
5. signatures (not initials) of staff present.

O. The entire center shall be checked after the last child departs to ensure that no child is left unattended at the center. Documentation shall include date, time, and signature of staff conducting the visual check and shall be reviewed and signed/initialed by the director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### **§5329. Off-Site Activities C Non-Vehicular**

A. Written parental authorization shall be obtained for all non-vehicular off-site activities. Authorization shall include the name of child, type and location of activity, date and signature of parent, and shall be updated at least annually.

B. Non-vehicular off-site activities shall require at least one staff in attendance and accessible to children at all times with documented current training in Infant/Child/Adult CPR and pediatric first aid.

C. The provider shall maintain a record of all non-vehicular off-site activities to include date, time, list of children, staff, and other adults, and type of activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### **§5331. Transportation Plan**

A. Providers who transport or arrange transportation of children assume additional responsibility and liability for the safety of the children.

B. If transportation is not provided, there shall be a posted notice to that effect.

C. If transportation is provided for field trips, there shall be a posted notice to that effect.

D. If transportation is provided, on a regular basis, there shall be a posted transportation plan that includes the following:

1. type of transportation provided, i.e. to and from home, to and from school, to and from swimming or dancing lessons, etc.;

2. geographical areas served;

3. time schedule of the services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### **§5333. Transportation Furnished by Center**

A. The provider shall maintain a signed parental authorization for each child to leave the center and to be transported in the vehicle. Authorization shall include name of child, type of transportation (i.e., to and from home, to and from school), parent's signature and date.

B. Transportation arrangements shall conform to state laws, including seat belts and child restraints.

C. Only one child shall be restrained in a single safety belt. Note: For additional information regarding state laws, contact Office of Public Safety.

D. At least two adult staff, one of whom may be the driver, shall be in each vehicle, unless the vehicle has a communication device which allows staff to contact emergency personnel, and the child/staff ratio is met in the vehicle. Two adult staff are required at all times when transporting any child under five years of age.

E. At least one staff in each vehicle shall be currently trained in Infant/Child/Adult CPR and pediatric first aid.

F. Children shall be under the direct supervision of staff at all times. The driver or attendant shall not leave the children unattended in the vehicle at any time.

G. Each child shall safely board or leave the vehicle from the curb side of the street and/or shall be escorted across the street.

H. A designated staff person shall be present when the child is delivered to the center

I. The vehicle shall be maintained in good repair.

J. The use of tobacco in any form, use of alcohol and possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children is prohibited.

K. Children shall not be transported in the back of a pickup truck.

L. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

M. The provider shall maintain a copy of a valid appropriate Louisiana driver's license for all individuals who drive vehicles used to transport children.

N. The provider shall maintain in force at all times current commercial liability insurance for the operation of vehicles to ensure medical coverage for children in the event of accident or injury. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment. The provider is responsible for payment of medical expenses of a child injured while in the provider's care. Documentation shall consist of the insurance policy or current binder that includes the name of the child care facility, the name of the insurance company, policy number, period of coverage and explanation of the coverage.

O. Each driver or attendant shall be provided with a current master transportation list including each child's name, pick up and drop off locations and authorized persons to whom the child may be released.

P. The driver or attendant shall maintain an attendance record for each trip. The record shall include the drivers name, the date, name of all passengers (children and adults) in the vehicle, the name of the person to whom the child was released and the time of release.

Q. The staff shall check the vehicle at the completion of each trip to ensure that no child is left on the vehicle. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked.

R. The vehicle shall have evidence of a current safety inspection.

S. There shall be first aid supplies in the vehicle.

T. There shall be information in each vehicle identifying the name of the director and the name, telephone number and address of the center for emergency situations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

### **§5335. Transportation by Contract**

A. The provider shall maintain a contract which is signed by the provider and a representative of the transportation agency outlining circumstances under which transportation will be provided and will include the following.

1. Transportation arrangements shall conform to state laws, including seat belts and child restraints.

2. The vehicle is maintained in good repair and inspected per state law.

3. Only one child shall be restrained in a single safety belt.

4. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

5. There shall be first aid supplies in the vehicle.

6. The use of tobacco in any form, the use of alcohol and use or possession of illegal substances or unauthorized potentially toxic substances, fireworks firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children is prohibited.

7. Children shall not be transported in the back of a pickup truck.

8. There shall be information in each vehicle identifying the name of the director and the name, telephone number and address of the center for emergency situations.

9. Drivers shall hold current valid appropriate Louisiana driver's licenses.

10. At least two adults, one of whom may be the driver, shall be in each vehicle, unless the vehicle has a communication device which allows contact with emergency personnel, and the required child/staff ratio is met in the vehicle. Two adults are required at all times when transporting any child under 5 years of age.

11. At least one adult in each vehicle shall be currently trained in Infant/Child/Adult CPR and pediatric first aid.

12. Children shall be under the direct supervision of staff at all times. The driver or attendant shall not leave the children unattended in the vehicle at any time.

13. Children shall be supervised during boarding and exiting vehicles by an adult who remains on the outside of the vehicle. A designated staff person shall be present when the child is delivered to the center.

B. Each driver or attendant shall be provided with a current master transportation list including each child's name, pick up and drop off locations and authorized persons to whom the child may be released.

C. The driver or attendant shall maintain an attendance record for each trip. The record shall include the drivers name, the date, name of all passengers (children and adults) in the vehicle, the name of the person to whom the child was released and the time of release.

D. The driver or attendant shall check the vehicle at the completion of each trip to ensure that no child is left on the vehicle. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked.

E. Copies of current drivers' licenses, insurance, Infant/Child/Adult CPR cards, Pediatric First Aid cards, master transportation list, daily attendance record and the visual check of the vehicle shall be maintained on file at the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

#### **§5337. Field Trips C Transportation Provided by Center**

A. When transportation for field trips is provided by the center, there shall be signed parental authorization for each child to leave the center and to be transported in the vehicle. Authorization shall include the type of vehicle used to

transport children, event, location, child's name, date and time of event, parent's signature and date.

B. At least two staff shall be in attendance and accessible to children with documented current training in Infant/Child/Adult CPR and pediatric first aid on field trips with at least one staff in each vehicle who is currently trained in Infant/Child/Adult CPR and pediatric first aid.

C. Transportation arrangements shall conform to state laws, including seat belts and child restraints.

D. Only one child shall be restrained in a single safety belt.

NOTE: For additional information regarding state laws, contact Office of Public Safety.

E. At least two staff, one of whom may be the driver, shall be in each vehicle unless the vehicle has a communication device which allows staff to contact emergency personnel and child/staff ratio is met in the vehicle. Two adult staff are required at all times when transporting any child under 5 years of age.

F. Children shall be under the direct supervision of staff at all times. The driver or attendant shall not leave the children unattended in the vehicle at any time.

G. Children shall be supervised during boarding and exiting vehicles by an adult who remains on the outside of the vehicle.

H. The vehicle shall be maintained in good repair.

I. The use of tobacco in any form, use of alcohol and possession of illegal substances or unauthorized potentially toxic substances, fireworks, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children or while on the center sponsored field trip is prohibited.

J. Children shall not be transported in the back of a pickup truck.

K. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

L. Documentation of a valid appropriate Louisiana driver's license for all individuals transporting children.

M. Provider shall maintain in force at all times current commercial liability insurance for the operation of vehicles to ensure medical coverage for children in the event of accident or injury. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment. The provider is responsible for payment of medical expenses of a child injured while in provider's care. Documentation shall consist of the insurance policy or current binder that includes the name of the child care facility, the name of the insurance company, policy number, period of coverage and explanation of the coverage.

N. The driver or staff person shall check the vehicle and account for each child upon arrival and departure at each destination to ensure no child is left on the vehicle or at each destination. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked for each loading and unloading of children.

O. The vehicle shall have evidence of a current safety inspection.

P. First aid supplies shall be provided for each field trip (at least one kit per trip).

Q. There shall be information in each vehicle identifying the name of the director and the name, telephone number and address of the center for emergency situations.

R. The provider shall maintain a record of all field trips taken, to include date and destination, list of passengers (children, parents, staff) (going and returning) and method of transportation. A copy of this information shall also be maintained in the center and in each vehicle while the field trip is in progress.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

#### **§5339. Field Trips C Transportation Provided by Parents**

A. The provider shall maintain a signed parental authorization for each child to leave the center and be transported in the vehicle. Authorization shall specify that transportation will be provided by parents, and shall also include child's name, event, location, date and time of event, parent's signature and date.

B. Field trips shall require at least two staff in attendance and accessible to children to have documented current training in Infant/Child/Adult CPR and pediatric first aid.

C. Transportation arrangements shall conform to state laws, including seat belts and child restraints.

D. Only one child shall be restrained in a single safety belt.

E. The provider shall maintain a copy of each parent's valid driver's license and current liability insurance.

F. A planned route shall be provided to each driver and a copy maintained in the center.

G. Children shall be under the direct supervision of an adult at all times. The driver or attendant shall not leave the children unattended in the vehicle at any time.

H. Children shall be supervised during boarding and exiting vehicles by an adult who remains on the outside of the vehicle.

I. The provider shall maintain a record of all field trips taken, to include date and destination, list of passengers (children, parents, staff, other adults) (going and returning) and method of transportation. A copy of this information shall also be maintained in the center and in each vehicle while the field trip is in progress.

J. The driver or staff person shall check the vehicle and account for each child upon arrival and departure at each destination to ensure no child is left on the vehicle or at each destination. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked for each loading and unloading of children.

K. The vehicle shall have evidence of a current safety inspection.

L. There shall be information in each vehicle identifying the name of the director and the name, telephone number and address of the center for emergency situations.

M. First aid supplies (at least one per trip) shall be available for each field trip.

N. The use of tobacco in any form, the use of alcohol and use or possession of illegal substances or unauthorized potentially toxic substances, fireworks, firearms, pellet or

BB guns (loaded or unloaded) in any vehicle while transporting children or on center sponsored field trip is prohibited.

O. Children shall not be transported in the back of a pickup truck.

P. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

#### **§5341. Field Trips C Transportation by Contract**

A. The provider shall maintain a contract which is signed by the provider and a representative of the transportation agency outlining circumstances under which transportation will be provided and will include the following.

1. Transportation arrangements conform to state laws including seat belts and child restraints.

2. The vehicle shall be maintained in good repair and inspected per state law.

3. Only one child shall be restrained in a single safety belt.

4. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

5. The use of tobacco in any form, the use of alcohol and use or possession of illegal substances or unauthorized potentially toxic substances, fireworks, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children or on center sponsored field trip is prohibited.

6. All drivers must hold current valid appropriate Louisiana driver's licenses.

7. Children shall not be transported in the back of a pickup truck.

B. Field trips shall require at least two staff in attendance and accessible to children at all times to have documented current training in Infant/Child/Adult CPR and pediatric first aid.

C. At least two staff, one of whom may be the driver, shall be in each vehicle unless the vehicle has a communication device which allows staff to contact emergency personnel, and the required child/staff ratio is met in the vehicle. Two adult staff are required at all times when transporting any child under 5 years of age.

D. At least one staff in each vehicle shall be currently trained in Infant/Child/Adult CPR and pediatric first aid.

E. Children are under the direct supervision of staff at all times. The driver or attendant shall not leave the children unattended in the vehicle at any time.

F. Children shall be supervised during boarding and exiting vehicles by an adult who remains on the outside of the vehicle.

G. There shall be information in the center and each vehicle listing the names of children, parents and staff in each vehicle (going and returning) destination and date.

H. There shall be information in each vehicle identifying the name of the director and the name, telephone number and address of the center for emergency situations.

I. First aid supplies (at least one per trip) shall be available for each field trip.

J. The driver or staff person shall check the vehicle and account for each child upon arrival and departure at each destination to ensure no child is left on the vehicle or at each destination. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked for each loading and unloading of children.

K. Copies of driver licenses and insurance shall be maintained on file at the center.

L. When transportation for field trips is provided by an outside source, there shall be signed parental authorization for each child to leave the center and to be transported in the vehicle. Authorization shall include the type of vehicle used to transport children, event, location, child's name, date and time of event, parent's signature and date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

#### **§5443. Care for Children During Nighttime Hours**

A. All minimum standards for child care centers apply to care after 9 p.m. and in which no individual child remains for more than 24 hours in one continuous stay.

B. In addition, the following standards shall apply.

1. There shall be a designated "Staff-in-Charge" employee who is at least 21 years of age.

2. Adequate staff shall be present in the center to meet the child/staff ratios as indicated in §5315, however, there shall always be a minimum of at least two staff present.

3. Meals shall be served to children who are in the center at the ordinary meal times.

4. Each child shall have a separate, age appropriate bed or cot with mat or mattress covered by a sheet for each child, as well as a covering for each child, (bunk beds are not allowed).

5. There shall be a posted schedule of activities.

6. Evening quiet time activity such as story time, games, and reading shall be provided to each child arriving before bedtime.

7. Physical restraints shall not be used to confine children to bed.

8. Center's entrance and drop off zones shall be well lighted during hours of operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

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 20:450 (April 1994), LR 24:2345 (December 1998), LR 28:

#### **Family Impact Statement**

In accordance with Section 972 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted the family impact statement regarding the rule proposed for adoption, repeal or amendment.

1. What effect will this rule have on the stability of the family? This proposed rule to revise minimum standards for licensure of Class "A" child day care facilities will have no affect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed rule provides parents with the minimum standards required for Class "A" day care facilities. Parents can use the information in these regulations to assist them in making an informed decision when choosing a day care facility that will educate and supervise their children.

3. What effect will this have on the functioning of the family? This rule is not anticipated to have any affect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no affect on family earnings and family budget.

5. What effect will this have on the behavior and personal responsibility of children? A day care facility adhering to the minimum standards in this proposed rule will be better equipped to improve the behavior and personal responsibility of children in their care.

6. Is the family or local government able to perform the function as contained in this proposed rule? The family or local government is not able to perform the function contained in this proposed rule.

Interested persons may submit written comments within the next 20 days to Thalia Stevenson, Director, Bureau of Licensing, P.O. Box 3078, Baton Rouge. LA 70821-3078.

Public hearings on this proposed rule will be held on Tuesday, May 28, 2002 at Delgado Early Childhood Education Student Life Center, 615 City Park Avenue, New Orleans, LA from 10 a.m. to 12 p.m.; Wednesday, May 29, 2002 at the LaSalle Building, 617 North 3rd Street, Natural Resources Hearing Room, Baton Rouge, LA from 10 a.m. to 12 p.m.; and Thursday, May 30, 2002 at Louisiana United Methodist Children and Family Services, 901 South Vienna, Ruston, LA 71270 from 10 a.m. to 12 p.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing at the public hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (voice and TDD).

Gwendolyn P. Hamilton  
Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Class "A" Child Day Care**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be a minimal cost for printing the new regulations. A total of 3,500 copies of the regulations will be printed at approximately \$1.58 per copy (totaling \$5,530), and a cost of \$2,006 for postage to mail regulations to all currently licensed facilities. The total cost is \$7,536. There are no other implementation costs to state or local governmental units associated with this proposed rule to adopt minimum licensing standards for Class "A" child day care facilities.



II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Department of Social Services currently collects licensing fees from facilities that are licensed under this category. Depending on the capacity of the facility, the fees range from \$25 for 15 or fewer children up to \$250 for 101 or more children. This policy revision will not affect the amount collected from these facilities.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The estimated costs to directly affected persons would be the licensing fee charged, which ranges from \$25 to \$250 depending upon the capacity of the facility. This policy revision will not affect the amount currently collected from these facilities. There will be no costs or economic benefit to other non-governmental groups. This revision only consolidates and makes technical changes to the current minimum standards.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no impact anticipated on competition or employment.

Thalia Stevenson  
Director  
0204#069

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**  
**Department of Treasury**  
**Deferred Compensation Commission**

**Public Employees Deferred Compensation Plan**  
(LAC 32:VII.Chapters 1-19)

Editor's Note: This Notice of Intent is being republished to correct a printing error. This proposed rule may be viewed on pages 708-718 of the March 20, 2002 edition of the *Louisiana Register*.

Under the authority of R.S. 42:1301-1308, and §457 of the *Internal Revenue Code* of 1986 as amended, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of the Treasury, Deferred Compensation Commission advertises its intent to amend the Public Employees Deferred Compensation Plan. The proposed amendments have no impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

The State of Louisiana Public Employees Deferred Compensation Plan (the "Plan") was adopted by the Louisiana Deferred Compensation Commission (the commission), effective September 15, 1982. The Plan was established in accordance with R.S. 42:1301-1308, and §457 of the *Internal Revenue Code of 1986*, as amended, for the purpose of providing supplemental retirement income to employees and independent contractors by permitting such individuals to defer a portion of compensation to be invested and distributed in accordance with the terms of the Plan. The Plan was repealed and repromulgated in its entirety in the (volume 24, number 10) October 20, 1998 *Louisiana Register* for codification in *Louisiana Administrative Code* format.

**Title 32**  
**GROUP BENEFITS**

**Part VII. Public Employee Deferred Compensation**  
**Chapter 1. Administration**

**§101. Definitions**

*Administrator or Plan Administrator* Cthe person, persons or entity appointed by the Louisiana Deferred Compensation Commission to administer the Plan pursuant to LAC 71:VII.103.A, if any.

*Age 50 or Older Catch-up* Cthe deferred amount described pursuant to LAC 71:VII.303.C.

*Beneficiary* Cthe person, persons or entities designated by a participant pursuant to LAC 71:VII.301.A.5.  
\* \* \*

*Compensation* Call payments paid by the employer to an employee or independent contractor as remuneration for services rendered, including salaries and fees, and, to the extent permitted by Treasury regulations or other similar guidance, accrued vacation and sick leave pay.  
\* \* \*

*Includible Compensation* C(for purposes of the limitation set forth in LAC 71:VII.303.A), compensation for services performed for the employer as defined in IRC §457(e)(5).  
\* \* \*

*IRCC* the *Internal Revenue Code of 1986*, as amended, or any future United States Internal Revenue law. References herein to specific section numbers shall be deemed to include Treasury regulations thereunder and Internal Revenue Service guidance thereunder and to corresponding provisions of any future United States internal revenue law.  
\* \* \*

*Limited Catch-Up* Cthe deferred amount described in LAC 71:VII.305.A.

*Normal Retirement Age* C

1. the age designated by a participant, which age shall be between:

a. the earliest date on which such participant is entitled to retire under the public retirement system of which that participant is a member without actuarial reduction in his or her benefit; and

b. age 70 1/2, provided, however, that if a participant continues in the employ of the employer beyond 70 1/2, *normal retirement age* means the age at which the participant severs employment;

2. if the participant is not a member of a defined benefit plan in any public retirement system, the participant's *normal retirement age* may not be earlier than age 50, and may not be later than age 70 1/2;

3. if a participant continues to be employed by employer after attaining age 70 1/2, not having previously elected an alternate *normal retirement age*, the participant's alternate *normal retirement age* shall not be later than the mandatory retirement age, if any, established by the employer, or the age at which the participant actually severs employment with the employer if the employer has no mandatory retirement age.

*Participant* Can individual who is eligible to defer compensation under the Plan, and has executed an effective

deferral authorization. *Participant* also includes an employee or independent contractor who has severance from employment but has not received a complete distribution of his or her interest in deferred compensation under the Plan.

\*\*\*

*Plan* the State of Louisiana Public Employees Deferred Compensation Plan established by this document and any applicable amendment.

\*\*\*

*Qualified Domestic Relations Order* or *QDRO* as specified in LAC 71:VII.1503.B.

*Severance from Employment or Severs Employment*

1. *severance* of the participant's employment with the employer. A participant shall be deemed to have severed employment with the employer for purposes of this Plan when both parties consider the employment relationship to have terminated and neither party anticipates any future employment of the participant by the employer. In the case of a participant who is an independent contractor, *severance from employment* shall be deemed to have occurred when:

- a. the participant's contract for services has completely expired and terminated;
- b there is no foreseeable possibility that the employer shall renew the contract or enter into a new contract for services to be performed by the participant; and
- c. it is not anticipated that the participant shall become an employee of the employer.

2. with respect to an employee, the permanent *severance* of the employment relationship with the employer on account of such employee's:

- a. retirement;
- b. discharge by the employer;
- c. resignation;
- d. layoff; or
- e. in the case of an employee who is an appointed or elected officer, the earlier of:
  - i. the taking of the oath of office of such officer's successor; or
  - ii. the cessation of the receipt of compensation.

3. If an employee incurs a break in service for a period of less than 30 days or transfers among various Louisiana governmental entities, such break or transfer shall not be considered a *severance from employment*.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1962 (October 1998), amended LR 28:

### §105. Duties of Commission

A.1. - 7. ...

8. appointing an emergency committee comprised of at least three individuals. Applications for a withdrawal of deferred compensation based on an unforeseeable emergency shall be approved or disapproved by such committee.

8.a. - b.iii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1963 (October 1998), amended LR 28:

## Chapter 3. Plan Participation, Options and Requirements

### §301. Enrollment in the Plan

A. The following rules apply to compensation deferred under the Plan.

1. A participant may not defer any compensation unless a deferral authorization providing for such deferral has been completed by the participant and accepted by the commission prior to the beginning of such payroll period. With respect to a new employee, compensation will be deferred in the payroll period during which a participant first becomes an employee if a deferral authorization providing for such deferral is executed on or before the first day on which the participant becomes an employee. Any prior employee who was a participant in the Plan and is rehired by employer may resume participation in the Plan by entering into a participation agreement. Unless distributions from the Plan have begun due to that prior severance from employment, however, any deferred commencement date elected by such employee with respect to those prior Plan assets shall be null and void.

2. - 3. ...

4. Notwithstanding LAC 71:VII.301.A.1, to the extent permitted by applicable law, the administrator may establish procedures whereby each employee becomes a participant in the Plan and, as a term or condition of employment, elects to participate in the Plan and consents to the deferral by the employer of a specified amount for any payroll period for which a participation agreement is not in effect. In the event such procedures are in place, a participant may elect to defer a different amount of compensation per payroll period, including zero, by entering into a participation agreement.

5. Beneficiary. Each participant shall initially designate in the participation agreement a beneficiary or beneficiaries to receive any amounts, which may be distributed in the event of the death of the participant prior to the complete distribution of benefits. A participant may change the designation of beneficiaries at any time by filing with the commission a written notice on a form approved by the commission. If no such designation is in effect at the time of participant's death, or if the designated beneficiary does not survive the participant by 30 days, his beneficiary shall be his surviving spouse, if any, and then his estate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1964 (October 1998), amended LR 28:

### §303. Deferral Limitations

A. Except as provided in LAC 71:VII.305.A.1-2.a-b, the maximum that may be deferred under the Plan for any taxable year of a participant shall not exceed the lesser of:

1. the applicable dollar amount in effect for the year, as adjusted for the calendar year in accordance with IRC §457(e)(15); or

2. 100 percent of the participant's includible compensation, each reduced by any amount specified in Subsection B of this §303 that taxable year.

B. The deferral limitation shall be reduced by any amount excludable from the participant's gross income attributable to elective deferrals to another eligible deferred compensation plan described in IRC §457(b).

C. A participant who attains age 50 or older by the end of a Plan year and who does not utilize the limited catch-up for such Plan year may make a deferral in excess of the limitation specified in Subsection A.1-2 of this §303, up to the amount specified in and subject to any other requirements under IRC §414(v).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1964 (October 1998), amended LR 28:

### §305. Limited Catch-up

A. For one or more of the participant's last three taxable years ending before the taxable year in which normal retirement age under the Plan is attained, the maximum deferral shall be the lesser of:

1. twice the otherwise applicable dollar limit under IRC §457(e)(15) for that taxable year; reduced by any applicable amount specified in LAC 71:VII.303.B; or

2. the sum of:

a. the limitations established for purposes of §303.A of these rules, for such taxable year (determined without regard to this §305); also

b. so much of the limitation established under §303.A of the Plan or established in accordance with IRC §457(b)(2) and the regulations thereunder under an eligible deferred compensation plan sponsored by an entity other than the employer and located in the same state for prior taxable years (beginning after December 31, 1978 and during all or any portion of which the participant was eligible to participate in this Plan) and has not theretofore been used under §§303.A or 305.A hereof or under such other plan (taking into account the limitations under and participation in other eligible deferred compensation plans in accordance with the *Internal Revenue Code*); provided, however, that this §305 shall not apply with respect to any participant who has previously utilized, in whole or in part, the limited catch-up under this Plan or under any other eligible deferred compensation plan (within the meaning of IRC §457 and the regulations thereof).

B. If a participant is not a member of a defined benefit plan in any public retirement system, normal retirement age may not be earlier than age 50, and may not be later than age 70 1/2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1964 (October 1998), amended LR 28:

### §307. Participant Modification of Deferral

A. The participant shall be entitled to modify the amount (or percentage) of deferred compensation once each enrollment period with respect to compensation payable no earlier than the payroll period after such modification is entered into by the participant and accepted by the commission. Notwithstanding the above, if a negative election procedure has been implemented pursuant to §301.A.4 of this Chapter, a participant may enter into or modify a participation agreement at any time to provide for no deferral.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:

### §309. Employer Modification of Deferral

A. The commission shall have the right to modify or disallow the periodic deferral of compensation elected by the participant:

1. in excess of the limitations stated in LAC 71:VII.303.A and 305.A;

2. - 6. ...

B. And to the extent permitted by and in accordance with the *Internal Revenue Code*, the employer or administrator may distribute the amount of a participant's deferral in excess of the distribution limitations stated in LAC 71:VII.301, 303, 305, 307 and 309 notwithstanding the limitations of LAC 71:VII.701.A; provided, however, that the employer and the commission shall have no liability to any participant or beneficiary with respect to the exercise of, or the failure to exercise, the authority provided in this LAC 71:VII.309.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:

### §311. Revocation

A. A participant may, at any time, revoke his or her deferral authorization by notifying the commission, in writing, on forms acceptable to the commission. Upon the acceptance of such notification, deferrals under the plan shall cease no later than the commencement of the first pay period beginning at least 30 days after acceptance; provided, however, that the commission shall not be responsible for any delay which occurs despite its good faith efforts. In no event shall the revocation of a participant's deferral authorization permit a distribution of deferred compensation, except as provided in §701.A of these rules, and shall be subject to the terms and provisions of the affected investment.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:

### §313. Re-Enrollment

A. A participant who revokes the participation agreement as set forth in §311.A above may execute a new participation agreement to defer compensation payable no earlier than the payroll period after such new participation agreement is executed by the participant and accepted by the commission.

B. A former participant who is rehired after retirement may rejoin the Plan as an active participant unless ineligible to participate under other Plan provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:

## Chapter 5. Investments

### §505. Participant Accounts

A. The commission shall maintain or cause to be maintained one or more individual deferred compensation ledger account or similar individual account(s) for each

participant. Such accounts shall include separate accounts, as necessary, for IRC §457 Deferred Compensation, IRC §457 rollovers, IRA rollovers, other qualified plan and IRC §403(b) plan rollovers, and such other accounts as may be appropriate from time to time for plan administration. At regular intervals established by the commission, each participant's account shall be:

A.4. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:

## **Chapter 7. Distributions**

### **§701. Conditions for Distributions**

A. Payments from the participants §457 Deferred Compensation Plan account to the participant or beneficiary shall not be made, or made available, earlier than:

1. the participant's severance from employment pursuant to LAC 71:VII.703.A or death; or

2. the participant's account meets all of the requirements for an in-service *de minimus* distribution pursuant to LAC 71:VII.705.A and B; or

3. the participant incurs an approved unforeseeable emergency pursuant to LAC 71:VII.709.A; or

4. the participant transfers an amount to a defined benefit governmental plan pursuant to LAC 71:VII.705.C; or

5. April 1 of the calendar year following the calendar year in which the participant attains age 70 1/2.

B. Payments from a participant's rollover account(s) may be made at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:

### **§703. Severance from Employment**

A. Distributions to a participant shall commence following the date in which the participant severs employment, in a form and manner determined pursuant to LAC 71:VII.713.A, 715.A and 717.A.

B. Upon notice to participants, and subject to LAC 71:VII.701.A., 703.B and 721.A, the administrator may establish procedures under which a participant whose total §457 deferred compensation account balance is less than an amount specified by the administrator (not in excess of \$5,000 or other applicable limit under the *Internal Revenue Code*) will receive a lump sum distribution on the first regular distribution commencement date (as the employer or administrator may establish from time to time) following the participant's severance from employment, notwithstanding any election made by the participant pursuant to LAC 71:VII.721.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:

### **§705. In-Service Distributions**

A. Voluntary In-Service Distribution of *De Minimis* Accounts. A participant who is an active employee shall receive a distribution of the total amount payable to the participant under the Plan if the following requirements are met:

1. the portion of the total amount payable to the participant under the Plan does not exceed an amount specified from time to time by the commission (not in excess of \$5,000 or other applicable limit under the *Internal Revenue Code*);

2. the participant has not previously received an in-service distribution of the total amount payable to the participant under the Plan;

3. no amount has been deferred under the Plan with respect to the participant during the two-year period ending on the date of the in-service distribution; and

4. the participant elects to receive the distribution.

B. Involuntary In-Service Distribution of *De Minimis* Accounts. Upon notice to participants, and subject to LAC 71:VII.721.A, the commission may establish procedures under which the Plan shall distribute the total amount payable under the Plan to a participant who is an active employee if the following requirements are met:

1. the portion of the total amount payable to the participant under the Plan does not exceed an amount specified from time to time by the commission (not in excess of \$5,000 or other applicable limit under the *Internal Revenue Code*);

2. the participant has not previously received an in-service distribution of the total amount payable to the participant under the Plan; and

3. no amount has been deferred under the Plan with respect to the participant during the two-year period ending on the date of the in-service distribution.

C. Purchase of Defined Benefit Plan Service Credit

1. If a participant is also a participant in a defined benefit governmental plan (as defined in IRC §414(d)), such participant may request the commission to transfer amounts from his or her account for:

a. the purchase of permissive service credit (as defined in IRC §415(n)(3)(A)) under such plan; or

b. a repayment to which IRC §415 does not apply by reason of IRC §415(k)(3).

2. Such transfer requests shall be granted in the sole discretion of the commission, and if granted, shall be made directly to the defined benefit governmental plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:

### **§707. Deferred Commencement Date at Separation from Service**

A. Following the date in which the participant severs employment, the participant may select a deferred commencement date for all or a portion of the participant's account balance. If the participant elects to defer the entire account balance, the future commencement date may not be later than April 1 of the calendar year following the calendar year in which the participant attains age 70 1/2.

B. If the participant is an independent contractor:

1. in no event shall distributions commence prior to the conclusion of the 12-month period beginning on the date on which all such participant's contracts to provide services to or on behalf of the employer expire; and

2. in no event shall a distribution payable to such participant pursuant to §703.A of these rules commence if, prior to the conclusion of the 12-month period, the

participant performs services for the employer as an employee or independent contractor.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

**HISTORICAL NOTE:** Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:

### §709. Unforeseeable Emergency

A. If a participant has incurred a genuine unforeseeable emergency and no other resources of financial relief are available, the commission may grant, in its sole discretion, a participant's request for a payment from the participant's account. Any payment made under this provision shall be in a lump sum.

1. The commission shall have the right to request and review all pertinent information necessary to assure that hardship withdrawal requests are consistent with the provisions of IRC §457.

2. In no event, however, shall an unforeseeable emergency distribution be made if such hardship may be relieved:

- a. through reimbursement or compensation by insurance or otherwise;
- b. by liquidation of the participant's assets, to the extent the liquidation of the participant's assets would not itself cause a severe financial hardship; or
- c. by cessation of deferrals under this Plan.

3. The amount of any financial hardship benefit shall not exceed the lesser of:

- a. the amount reasonably necessary, as determined by the commission, to satisfy the hardship; or
- b. the amount of the participant's account.

4. Payment of a financial hardship distribution shall result in mandatory suspension of deferrals for a minimum of six months from the date of payment (or such other period as mandated in Treasury regulations).

5. Currently, the following events are not considered unforeseeable emergencies under the Plan:

- a. enrollment of a child in college;
- b. purchase of a house;
- c. purchase or repair of an automobile;
- d. repayment of loans;
- e. payment of income taxes, back taxes, or fines associated with back taxes;
- f. unpaid expenses including rent, utility bills, mortgage payments, or medical bills;
- g. marital separation or divorce; or
- h. bankruptcy (except when bankruptcy resulted directly and solely from illness or casualty loss).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

**HISTORICAL NOTE:** Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1968 (October 1998), amended LR 28:

### §711. Death Benefits

A. Upon the participant's death, the participant's remaining account balance(s) will be distributed to the beneficiary commencing after the administrator receives satisfactory proof of the participant's death (or on the first regular distribution commencement date thereafter as the employer or administrator may establish from time to time), unless prior to such date the beneficiary elects a deferred

commencement date, in a form and manner determined pursuant to LAC 71:VII.713.A and 717.A.

B. If there are two or more beneficiaries, the provisions of this §711 and of §717.A of these rules shall be applied to each beneficiary separately with respect to each beneficiary's share in the participant's account.

C. If the beneficiary dies after beginning to receive benefits but before the entire account balance has been distributed, the remaining account balance shall be paid to the estate of the beneficiary in a lump sum.

D. Under no circumstances shall the commission be liable to the beneficiary for the amount of any payment made in the name of the participant before the commission receives satisfactory proof of the participant's death.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

**HISTORICAL NOTE:** Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1968 (October 1998), amended LR 28:

### §713. Payment Options

A. A participant's or beneficiary's election of a payment option must be made at least 30 days prior to the date that the payment of benefits is to commence. If a timely election of a payment option is not made, benefits shall be paid in accordance with §715.A of this Chapter 7. Subject to applicable law and the other provisions of this Plan, distributions may be made in accordance with one of the following payment options:

1. a single lump-sum payment;
2. installment payments for a period of years (payable on a monthly, quarterly, semiannual, or annual basis) which extends no longer than the life expectancy of the participant or beneficiary as permitted under the requirements of IRC §401(a)(9);
3. installment payments for a period of years (payable on a monthly, quarterly, semiannual, or annual basis) automatically adjusted for cost-of-living increases based on the rise in the *Consumer Price Index for All Urban Consumers* (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase shall be made in periodic payment checks beginning the following January;
4. partial lump-sum payment of a designated amount, with the balance payable in installment payments for a period of years, as described in Subsection A of this §713;
5. annuity payments (payable on a monthly, quarterly, or annual basis) for the lifetime of the participant or for the lifetime of the participant and beneficiary in compliance with IRC §401(a)(9);
6. such other forms of installment payments as may be approved by the commission consistent with the requirements of IRC §401(a)(9).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

**HISTORICAL NOTE:** Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1968 (October 1998), amended LR 28:

### §715. Default Distribution Option

A. In the absence of an effective election by the participant, beneficiary or other payee, as applicable, as to the commencement and/or form of benefits, distributions shall be made in accordance with the applicable

requirements of IRC §§ 401(a)(9) and 457(d), and proposed or final Treasury regulations thereunder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998), amended LR 28:

#### **§717. Limitations on Distribution Options**

A. No distribution option may be selected by a participant or beneficiary under this §717 unless it satisfies the requirements of IRC §§401(a)(9) and 457(d) and proposed or final Treasury regulations thereunder.

B. If installment payments are designated as the method of distribution, the minimum distribution shall be no less than \$100 per check and the payments made annually must be no less than \$600.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998), amended LR 28:

#### **§719. Taxation of Distributions**

A. To the extent required by law, income and other taxes shall be withheld from each benefit payment, and payments shall be reported to the appropriate governmental agency or agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998).

#### **§721. Transfers and Rollovers**

A. Transfers to the Plan. If the participant was formerly a participant in an eligible deferred compensation plan maintained by another employer, and if such plan permits the direct transfer of the participant's interest therein to the Plan, then the Plan shall accept assets representing the value of such interest; provided, however, that the participant has separated from service with that former employer and become an employee of employer. Such amounts shall be held, accounted for, administered and otherwise treated in the same manner as compensation deferred by the participant except that such amounts shall not be considered compensation deferred under the Plan in the taxable year of such transfer in determining the maximum deferral under LAC 71:VII.303.A.1-2. The commission may require such documentation from the predecessor plan, as it deems necessary to confirm that such plan is an eligible deferred compensation plan within the meaning of IRC §457, and to assure that transfers are provided under such plan. The commission may refuse to accept a transfer in the form of assets other than cash, unless the commission agrees to hold such other assets under the Plan.

B. In-Service Transfers from the Plan. If a participant separates from service prior to his or her required beginning date, and becomes a participant in an eligible deferred compensation plan of another governmental employer, and provided that payments under this Plan have not begun, such participant may request a transfer of his or her account to the eligible deferred compensation plan of the other employer. Requests for such transfers must be made in writing to the commission and shall be granted in the sole discretion of the commission. If an amount is to be transferred pursuant to this provision, the commission shall transfer such amount

directly to the eligible deferred compensation plan of the other employer. Amounts transferred to another eligible deferred compensation plan shall be treated as distributed from this Plan and this Plan shall have no further responsibility to the participant or any beneficiary with respect to the amount transferred.

#### **C. Rollovers to the Plan**

1. The Plan shall accept a rollover contribution on behalf of a Participant or Employee who may become a participant. A *rollover contribution*, for purposes of this Subsection, is an eligible rollover contribution (as defined in IRC §402(f)(2)) from any:

- a. plan qualified under IRC §401(a) or 403(a);
- b. tax-sheltered annuity or custodial account described in IRC §403(b);
- c. individual retirement account or annuity described in IRC §408;
- d. eligible deferred compensation plan described in IRC §457(b).

2. Prior to accepting any rollover contribution, the commission may require that the participant or employee establish that the amount to be rolled over to the Plan is a valid rollover within the meaning of the *Internal Revenue Code*. A participant's rollover contribution shall be held in a separate rollover account or accounts, as the commission shall determine from time to time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998), amended LR 28:

#### **§723. Eligible Rollover Distributions**

A. General. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this §723, a distributee may elect, at the time and in the manner prescribed by the employer, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. Definitions. For purposes of this §723, the following definitions shall apply:

*Eligible Rollover Distribution* Can eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for:

- a. a specified period of 10 years or more;
- b. any distribution to the extent such distribution is required under IRC §401(a)(9);
- c. any distribution that is a deemed distribution under the provisions of IRC §72(p);
- d. the portion of any distribution that is not includable in gross income; and any hardship distribution or distribution on account of unforeseeable emergency.

*Eligible Retirement Plan* Can eligible retirement plan is an individual retirement account described in IRC §408(a), an individual retirement annuity described in IRC §408(b), an annuity plan described in IRC §403(a) that accepts the distributee's eligible rollover distribution, a qualified trust

described in IRC §401(a) (including §401(k)) that accepts the distributee's eligible rollover distribution, a tax-sheltered annuity described in IRC §403(b) that accepts the distributee's eligible rollover distribution, or another eligible deferred compensation plan described in IRC §457(b) that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

**Distributee** includes an employee or former employee, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in IRC §414(p), are distributees with regard to the interest of the spouse or former spouse.

**Direct Rollover** a payment by the Plan to the eligible retirement plan specified by the distributee.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

**HISTORICAL NOTE:** Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

#### **§725. Elections**

A. Elections under this Chapter 7 shall be made in such form and manner as the commission may specify from time to time. To the extent permitted by and in accordance with the *Internal Revenue Code*, any irrevocable elections as to the form or timing of distributions executed prior to January 1, 2002, are hereby revoked.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

**HISTORICAL NOTE:** Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998), amended LR 28:

#### **§727. Practices and Procedures**

A. The commission may adopt practices and procedures applicable to existing and new distribution elections.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

**HISTORICAL NOTE:** Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:

### **Chapter 9. Leave of Absence**

#### **§901. Paid and Unpaid Leave of Absence**

A. Paid Leave of Absence. If a participant is on an approved leave of absence from the employer with compensation, or on approved leave of absence without compensation that does not constitute a severance from employment within the meaning of IRC §402(d)(4)(A)(iii) which under the employer's current practices is generally a leave of absence without compensation for a period of one year or less, said participant's participation in the Plan may continue.

B. Unpaid Leave of Absence. If a participant is on an approved leave of absence without compensation and such leave of absence continues to such an extent that it becomes a severance from employment within the meaning of IRC §402(e)(4)(A)(iii), said participant shall have severed employment with the employer for purposes of this Plan. Upon termination of leave without pay and return to active status, the participant may execute a new participation agreement to be effective when permitted by LAC 71:VII.313.B of the Plan.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

**HISTORICAL NOTE:** Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

### **Chapter 11. Participant Loans**

#### **§1101. Authorization of Loans**

A. The commission may direct the administrator to make loans to participants on or after the effective date of Treasury regulations or other guidance under IRC §457 and to the extent allowable under and in accordance with IRC §457. Such loans shall be made on the application of the participant in a form approved by the administrator and on such terms and conditions as are set forth in this Chapter 11, provided, however, that the administrator may adopt rules or procedures specifying different loan terms and conditions, if necessary or desirable, to comply with or conform to such Treasury regulations or other guidance and other applicable law.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

**HISTORICAL NOTE:** Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

#### **§1103. Maximum Loan Amount**

A. In no event shall any loan made to a participant be in an amount which shall cause the outstanding aggregate balance of all loans made to such participant under this Plan exceed the lesser of:

1. \$50,000, reduced by the excess (if any) of:

a. the highest outstanding balance of loans from the Plan to the participant during the one-year period ending on the day before the date on which the loan is made;

b. over the outstanding balance of loans from the Plan to the participant or the beneficiary on the date on which the loan is made; or

2. one-half of the participant's total amount deferred.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

**HISTORICAL NOTE:** Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

#### **§1105. Repayment of Loan**

A. Each loan shall mature and be payable, in full and with interest, within five years from the date such loan is made, unless:

1. the loan is used to acquire any dwelling unit that within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the participant; or

2. loan repayments are, at the employer's election, suspended as permitted by IRC §414(u)(4) (with respect to qualified military service).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

**HISTORICAL NOTE:** Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:

#### **§1107. Loan Terms and Conditions**

A. In addition to such rules as the administrator may adopt, which rules are hereby incorporated into this Plan by reference, all loans to participants shall comply with the following terms and conditions.

1. Loans shall be available to all participants on a reasonably equivalent basis.

2. Loans shall bear interest at a reasonable rate to be fixed by the administrator based on interest rates currently being charged by commercial lenders for similar loans. The administrator shall not discriminate among participants in the matter of interest rates, but loans granted at different times may bear different interest rates based on prevailing rates at the time.

3. Each loan shall be made against collateral, including the assignment of no more than one-half of the present value of the participant's total amount deferred as security for the aggregate amount of all loans made to such participant, supported by the participant's collateral promissory note for the amount of the loan, including interest.

4. Loan repayments must be made by payroll deduction. In all events, payments of principal and interest must be made at least quarterly and such payments shall be sufficient to amortize the principal and interest payable pursuant to the loan on a substantially level basis.

5. A loan to a participant or beneficiary shall be considered a directed investment option for such participant's account balance.

6. No distribution shall be made to any participant, or to a beneficiary of any such participant, unless and until all unpaid loans, including accrued interest thereon, have been satisfied. If a participant terminates employment with the employer for any reason, the outstanding balance of all loans made to him shall become fully payable and, if not paid within 30 days, any unpaid balance shall be deducted from any benefit payable to the participant or his beneficiary. In the event of default in repayment of a loan or the bankruptcy of a participant who has received a loan, the note will become immediately due and payable, foreclosure on the note and attachment of security will occur, the amount of the outstanding balance of the loan will be treated as a distribution to the participant, and the defaulting participant's accumulated deferrals shall be reduced by the amount of the outstanding balance of the loan (or so much thereof as may be treated as a distribution without violating the requirements of the *Internal Revenue Code*).

7. The loan program under the Plan shall be administered by the administrator in a uniform and nondiscriminatory manner. The administrator shall establish procedures for loans, including procedures for applying for loans, guidelines governing the basis on which loans shall be approved, procedures for determining the appropriate interest rate, the types of collateral which shall be accepted as security, any limitations on the types and amount of loans offered, loan fees and the events which shall constitute default and actions to be taken to collect loans in default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

### **Chapter 13. Plan Amendment or Termination** **§1301. Termination**

A. The commission may at any time terminate this Plan; provided, however, that no termination shall affect the amount of benefits, which at the time of such termination shall have accrued for participants or beneficiaries. Such accrued benefits shall include any compensation deferred before the time of the termination and income thereon accrued to the date of the termination.

B. Upon such termination, each participant in the Plan shall be deemed to have revoked his agreement to defer future compensation as provided in LAC 71:VII.311.A as of the date of such termination. Each participant's full compensation on a non-deferred basis shall be restored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

### **§1303. Amendments to the Plan**

A. The commission may also amend the provisions of this Plan at any time; provided, however, that no amendment shall affect the amount of benefits which at the time of such amendment shall have accrued for participants or beneficiaries, to the extent of compensation deferred before the time of the amendment and income thereon accrued to the date of the amendment, calculated in accordance with LAC 71:VII.505.A and the terms and conditions of the investment options hereunder; and provided further, that no amendment shall affect the duties and responsibilities of the trustee unless executed by the trustee.

B. Copies of Amendments. The administrator shall provide a copy of any plan amendment to any trustee or custodian and to the issuers of any investment options.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:

### **§1305. Disclaimer**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1971 (October 1998), repealed LR 28:

Editor's Note: Disclaimer text is included in §1505 of these rules.

## **Chapter 15. Taxes, Nonassignability and Disclaimer** **§1501. Tax Treatment of Amounts Deferred**

A. It is intended that pursuant to IRC §457, the amount of deferred compensation shall not be considered current compensation for purposes of federal and state income taxation. This rule shall also apply to state income taxation unless applicable state laws provide otherwise. Such amounts shall, however, be included as compensation to the extent required under the Federal Insurance Contributions Act (FICA). Payments under this Plan shall supplement retirement and death benefits payable under the employer's group insurance and retirement plans, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1971 (October 1998), amended LR 28:

### **§1503. Nonassignability**

A. It is agreed that neither the participant, nor any beneficiary, nor any other designee shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be nonassignable and nontransferable; and in the event of attempt to assign or transfer, the commission shall have no further liability hereunder, nor shall any unpaid amounts be subject to



attachment, garnishment or execution, or be transferable by operation of law in event of bankruptcy, or insolvency, except to the extent otherwise required by law.

B. Qualified Domestic Relations Orders approved by the commission shall be administered as follows.

1.a. To the extent required under a final judgment, decree, or order made pursuant to a state domestic relations law, herein referred to as a Qualified Domestic Relations Order (QDRO) which is duly filed upon the commission, any portion of a participant's account may be paid or set aside for payment to an alternate payee.

NOTE: For purposes for this §1503, an alternate payee is a person or persons designated by a domestic relations order who may be a spouse, former spouse, or a child of the participant.

b. Where necessary to carry out the terms of such a QDRO, a separate account shall be established with respect to the alternate payee, and such person(s) shall be entitled to make investment selections with respect thereto in the same manner as the participant. All costs and charges incurred in carrying out the investment selection shall be deducted from the account created for the alternate payee making the investment selection.

2. Any amounts so set aside for an alternate payee shall be paid out immediately in a lump sum, unless the QDRO directs a different form of payment or later payment date. Nothing in this §1503.B shall be construed to authorize any amounts to be distributed under the employer's plan at a time or in a form that is not permitted under IRC §457. Any payment made to a person other than the participant pursuant to this §1503.B shall be reduced by required income tax withholding. Such withholding and income tax reporting shall be done under the terms of the *Internal Revenue Code* as amended from time to time.

3. The commission's liability to pay benefits to a participant shall be reduced to the extent that amounts have been paid or set aside for payment to an alternate payee pursuant to this §1503.B. No amount shall be paid or set aside unless the commission, or its agents or assigns, has been provided with satisfactory evidence releasing them from any further claim by the participant with respect to these amounts. The participant shall be deemed to have released the commission from any claim with respect to such amounts in any case in which the commission has been notified of or otherwise joined in a proceeding relating to a QDRO, which sets aside a portion of the participant's account for an alternate payee, and the participant fails to obtain an order of the court in the proceeding relieving the employer from the obligation to comply with the QDRO.

4. The commission shall not be obligated to comply with any judgment, decree or order which attempts to require the Plan to violate any plan provision or any provision of §457 of the *Internal Revenue Code*. Neither the commission nor its agents or assigns shall be obligated to defend against or set aside any judgment, decree, or order described herein or any legal order relating to the division of a participant's benefits under the plan unless the full expense of such legal action is borne by the participant. In the event that the participant's action (or inaction) nonetheless causes the commission, its agents or assigns to incur such expense, the amount of the expense may be charged against the participant's account and thereby reduce the commission's obligation to pay benefits to the participant. In the course of

any proceeding relating to divorce, separation, or child support, the commission, its agents and assigns shall be authorized to disclose information relating to the participant's individual account to the participant's spouse, former spouse or child (including the legal representatives of the alternate payee), or to a court.

5. Any Conforming Equitable Distribution Order (CEDO), filed prior to January 2002 may be amended to comply with this §1503.B, pursuant to a Qualified Domestic Relations Orders (QDRO), which is duly filed upon the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:

#### **§1505. Disclaimer**

A. The commission makes no endorsement, guarantee or any other representation and shall not be liable to the Plan or to any participant, beneficiary, or any other person with respect to:

1. the financial soundness, investment performance, fitness, or suitability (for meeting a participant's objectives, future obligations under the Plan, or any other purpose) of any investment option in which amounts deferred under the Plan are actually invested; or

2. the tax consequences of the Plan to any participant, beneficiary or any other person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:

### **Chapter 17. Employer Participation**

#### **§1701. Additional Compensation Deferred**

A. Notwithstanding any other provisions of this Plan, the employer may add to the amounts payable to any participant under the Plan additional deferred compensation for services to be rendered by the participant to the employer during a payroll period, provided:

1. the participant has elected to have such additional compensation deferred, invested, and distributed pursuant to this Plan, prior to the payroll period in which the compensation is earned; and

2. such additional compensation deferred, when added to all other compensation deferred under the Plan, does not exceed the maximum deferral permitted by LAC 71:VII.303.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1972 (October 1998), amended LR 28:

### **Chapter 19. Applicable Terms**

#### **§1901. Interpretation**

A. Governing Law. This Plan shall be construed under the laws of the state of Louisiana.

B. Section 457. This Plan is intended to be an eligible deferred compensation plan within the meaning of §457 of the *Internal Revenue Code*, and shall be interpreted so as to be consistent with such Section and all regulations promulgated thereunder.

C. Employment Rights. Nothing contained in this Plan shall be deemed to constitute an employment agreement between any participant and the employer and nothing

contained herein shall be deemed to give a participant any right to be retained in the employ of the employer.

D. Days and Dates. Whenever time is expressed in terms of a number of days, the days shall be consecutive calendar days, including weekends and holidays, provided, however, that if the last day of a period occurs on a Saturday, Sunday or other holiday recognized by the employer, the last day of the period shall be deemed to be the following business day.

E. Word Usage. Words used herein in the singular shall include the plural and the plural the singular where applicable, and one gender shall include the other genders where appropriate.

F. Headings. The headings of articles, sections or other subdivisions hereof are included solely for convenience of reference, and if there is any conflict between such headings and the text of the Plan, the text shall control.

G. Entire Agreement. This Plan document shall constitute the total agreement or contract between the commission and the participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the participant. This Plan and any properly adopted amendment, shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assigns and on all designated beneficiaries of the participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:

#### **Family Impact Statement**

1. The Effect on the Stability of the Family. None. There will be no impact on the Stability of the family.

2. The Effect of the Authority and Rights of Parents Regarding the education and Supervision of their Children. None. There will be no impact on the Authority and Rights of Parents Regarding the Education and Supervision of their Children.

3. The Effect of the Functioning of the Family. None. There will be no impact on the functioning of the family.

4. The Effect on Family Earnings and Family budget. None. There will be no impact on family earnings and family budget.

5. The Effect on the behavior and Personal Responsibility of Children. None. There will be no impact on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. None. There will be no impact on the ability of the family or a local government to perform the function as contained in the proposed rule.

Interested persons may submit comments to Joseph A. Dionisi, Administrator, Louisiana Deferred Compensation Plan, 2237 South Acadian Thruway, Suite 702, Baton Rouge, LA 70808. Telephone: (225) 926-8082. Fax: (225) 926-4447

Individuals with disabilities who require special service should contact the Louisiana Deferred Compensation Plan office prior to the hearing.

Emery Bares  
Chairman

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Public Employees Deferred Compensation Plan**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

No anticipated costs anticipated to state or local government units.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

No anticipated effect on revenue collections.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

No anticipated cost to state. Amended Plan Document would ensure compliance with federal statutes to maintain eligible state deferred compensation plans.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

No anticipated effect on competition and employment.

Emery J. Bares  
Chairman  
0204#029

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

# Administrative Code Update

CUMULATIVE: JANUARY – MARCH 2002

LAC Title	Part.Section	Effect	Location LR 27 Month Page	LAC Title	Part.Section	Effect	Location LR 27 Month Page
1	III.Chapters 1-7	Adopted	Jan. 40	40	XV.Chapter 1	Amended	Mar. 511
7	XXIII.121, 125, 129 XXXIX.1307, 1315	Amended Amended	Jan. 39 Feb. 267	42	IX.4103	Repromulgated	Feb. 344
10	III.701, 702 III.703 XV.1501-1509 XV.505	Amended Repealed Adopted Adopted	Mar. 482 Mar. 482 Feb. 307 Mar. 484	43	I.701, 723	Amended	Mar. 516
22	I.107 I.359 III.4703	Adopted Amended Amended	Jan. 94 Jan. 94 Mar. 475	46	XLI.1105 LVII.113 LIX.201, 203 LXVII.1507 LXVII.5205, 5323, 5329 LXVII.5515, 5535, 5539 LXVII.4513 LXXXVI.501, 503, 705, 1101 LXXXVI.Chapters 16, 17 C.101-107	Amended Adopted Amended Amended Amended Amended Adopted Repealed	Jan. 46 Feb. 308 Jan. 96 Mar. 485 Mar. 486 Mar. 485 Mar. 487 Mar. 490 Mar. 490 Jan. 82
28	I.103 I.901 I.901 I.903 I.903 IV.301, 2103 IV.301, 503, 507, 701, 705 IV.803, 903, 907, 1303, 1901 IV.1903, 2103, 2107 VI.107, 301 XXI.Chapters 1, 3, 5 XXXVII.Chapters 1-35	Amended Amended Amended Amended Amended Amended Amended Amended Adopted Adopted	Feb. 268 Feb. 269 Feb. 272 Feb. 273 Mar. 445 Jan. 45 Mar. 446 Mar. 446 Mar. 446 Mar. 450 Feb. 274 Feb. 276	48	I.Chapter 75 V.Chapter 73 XI.3501	Amended Adopted Amended	Mar. 508 Mar. 502 Jan. 46
32	III.301 III.405 III.409, 501, 503, 505, 507 III.509, 511, 513, 515, 517 V.301 V.405 V.701 V.409, 501, 503, 505, 507 V.509, 511, 513, 515, 517	Amended Amended Amended Repealed Amended Amended Amended Amended Amended Repealed	Mar. 480 Mar. 479 Mar. 479 Mar. 479 Mar. 478 Mar. 476 Mar. 476 Mar. 477 Mar. 477 Mar. 477	51	III.Chapter 8 III.813	Repromulgated Amended	Feb. 344 Feb. 345
33	III.2201 III.2201 III.Chapter 6 III.621, 623, 625 III.5901 V.30105, 30135, 30292, 30293 V.30294 V.30112, 30149, 30295, 30296 V.30298, 30351 V.30129 IX.1123 IX.Chapter 23 XI.301, 303 XV.541	Adopted Repromulgated Amended Repealed Amended Amended Amended Adopted Adopted Repealed Amended Amended Amended Amended	Feb. 290 Mar. 450 Feb. 301 Feb. 301 Mar. 463 Jan. 83 Jan. 83 Jan. 83 Jan. 83 Jan. 83 Mar. 461 Mar. 463 Mar. 474 Feb. 305	55	III.315 XXIII.Chapters 1-47	Adopted Adopted	Feb. 346 Feb. 311
34	VII.307	Amended	Mar. 481	61	I.309 I.1302 I.1304 I.1305 I.44301 I.4908 I.5302 V.309, 703, 907, 1103, 1503 V.2503, 2705, 2707, 3103, 3301 V.3501	Amended Adopted Adopted Adopted Amended Adopted Adopted Amended Amended Amended	Jan. 97 Jan. 101 Jan. 98 Jan. 98 Feb. 348 Feb. 347 Feb. 348 Mar. 517 Mar. 517 Mar. 517
37	XI.717, 723	Amended	Mar. 510	67	III.1257 III.1290, 5390, 5503 III.2013 III.2015 III.2913 III.2529 III.5107 III.5505-5547 V.1301	Adopted Adopted Amended Repealed Amended Amended Adopted Adopted Amended	Mar. 522 Jan. 102 Jan. 103 Jan. 103 Jan. 102 Feb. 350 Feb. 349 Feb. 350 Jan. 102
				73	I.Chapter 12	Amended	Mar. 522
				76	I.327 VII.149 VII.519 VII.703	Adopted Amended Adopted Repromulgated	Feb. 354 Jan. 104 Mar. 524 Feb. 354

# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Horticulture Commission

Annual Quarantine Listing C2002

In accordance with LAC 7:XV.107 and 109, we are hereby publishing the annual quarantine.

#### Sweetpotato Weevil

(*Cylas formicarius elegantulus* Sum)

(a) In the United States: the states of Alabama, California, Florida, Georgia, Mississippi, North Carolina, South Carolina, Texas and any other state found to have the sweet potato weevil.

(b) In the state of Louisiana:

(1) The entire parishes of: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Cameron, DeSoto, East Baton Rouge, East Feliciana, Evangeline, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Natchitoches, Orleans, Plaquemines, Pointe Coupee, Rapides, Red River, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Feliciana.

#### Pink Bollworm

(*Pectinophora gossypiella* Saunders)

Pink bollworm quarantined areas are divided into generally infested and/or suppressive areas as described by USDA-PPQ.

##### Arizona

(1) Generally infested area: the entire state.

##### California

(1) Generally infested area: The entire counties of: Imperial, Inyo, Los Angeles, Orange, Riverside, San Bernardino, and San Diego.

(2) Suppressive area: The entire counties of: Fresno, Kern, Kings, Madera, Merced, San Benito, and Tulare.

##### Nevada

(1) Generally infested area: The entire counties of Clark and Nyle.

(2) Suppressive area: None.

##### New Mexico

(1) Generally infested area: The entire state.

##### Oklahoma

(1) Generally infested area: The entire State.

##### Texas

(1) Generally infested area: The entire State.

#### Phytophagous Snails

The States of Arizona and California.

#### Sugarcane Pests and Diseases

All States outside of Louisiana.

#### Lethal Yellowing

The States of Florida and Texas.

#### Tristeza, Xyloporosis, Psorosis, Exocortis.

All citrus growing areas of the United States.

#### Burrowing Nematode

(*Radopholus similis*)

The states of Florida and Hawaii and the Commonwealth of Puerto Rico.

#### Oak Wilt

(*Ceratocystis fagacearum*)

##### Arkansas

(1) Infected counties: Baxter, Benton, Boone, Carroll, Clay, Craighead, Crawford, Franklin, Fulton, Independence, Izard, Johnson, Lawrence, Logan, Madison, Marion, Mississippi, Nevada, Newton, Poinsett, Pope, Randolph, Scott, Searcy, Sharp, Stone, Washington, and Yell.

##### Illinois

(1) Entire state.

##### Indiana

(1) Entire state.

##### Iowa

(1) Entire State.

##### Kansas

(1) Infected counties: Anderson, Atchison, Cherokee, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Leavenworth, Linn, Miami, Neosho, Pottawatomie, Shawnee, and Wyandotte.

##### Kentucky

(1) Infected counties: Adair, Allen, Ballard, Bath, Bell, Boyd, Breathitt, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carter, Casey, Christian, Clay, Clinton, Cumberland, Daviess, Edmonson, Elliott, Estill, Fleming, Floyd, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harlan, Hart, Henderson, Hopkins, Jefferson, Johnson, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Logan, McCracken, McLean, Magoffin, Marshall, Martin, Menifee, Metcalfe, Montgomery, Morgan, Muhlenberg, Nelson, Ohio, Oldham, Owsley, Perry, Pike, Powell, Pulaski, Rowan, Russell, Taylor, Todd, Trigg, Union, Warren, Wayne, and Webster.

##### Maryland

(1) Infected counties: Allegany, Frederick, Garrett, and Washington.

##### Michigan

(1) Infected counties: Barry, Barrien, Calhoun, Cass, Clare, Clinton, Grand Traverse, Kalamazoo, Kent, Lake, Livingston, Manistee, Missaukee, Muskegon, Oakland, Roscommon, St. Joseph, Van Buren, Washtenaw, Wyne, and Menominee.

##### Minnesota

(1) Infected counties: Anoka, Aitkin, Blue Earth, Carver, Cass, Chicago, Crow Wing, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Le Sueur, McLeod, Mille Lacs, Morrison, Mower, Nicollet, Olmsted, Ramsey, Rice, Scott, Sherburne, Sibley, Steele, Wabasha, Waseca, Washington, Winona, and Wright.

Missouri

(1) Entire State.

Nebraska

(1) Infected counties: Cass, Douglas, Nemaha, Otoe, Richardson, and Sarpy.

North Carolina

(1) Infected counties: Buncombe, Burke, Haywood, Jackson, Lenoir, Macon, Madison, and Swain.

Ohio

(1) Entire State.

Oklahoma

(1) Infected counties: Adair, Cherokee, Craig, Delaware, Haskell, Latimer, LeFlore, Mayes, McCurtain, McIntosh, Ottawa, Pittsburg, Rogers, Sequoyah, and Wagoner.

Pennsylvania

(1) Infected counties: Adams, Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Centre, Clarion, Clinton, Cumberland, Erie, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mifflin, Perry, Somerset, Venango, Washington, and Westmoreland.

South Carolina

(1) Infected counties: Chesterfield, Kershaw, Lancaster, Lee, and Richland.

Tennessee

(1) Infected Counties: Blount, Carter, Cocke, Cumberland, Grainger, Greene, Hamblen, Hancock, Hardeman, Hawkins, Jefferson, Knox, Lincoln, Loudon, Montgomery, Rhea, Roane, Robertson, Sevier, Sullivan, Union, Washington, and White.

Texas

(1) Infected counties: Bandera, Bastrop, Bexar, Blanco, Basque, Burnett, Dallas, Erath, Fayette, Gillespie, Hamilton, Kendall, Kerr, Lampasas, Lavaca, McLennan, Midland, Tarrant, Travis, Williamson.

Virginia

(1) Infected counties: Aleghany, Augusta, Bath, Botetoust, Clarke, Frederick, Giles, Highland, Lee, Loudoun, Montgomery, Page, Rockbridge, Rockingham, Scott, Shenandoah, Smyth, Warren, Washington, Wise, and Wythe.

West Virginia

(1) Infected counties: all counties except Tucker and Webster.

Wisconsin

(1) Infected counties: Adams, Brown, Buffalo, Chippewa, Clark, Columbia, Crawford, Dane, Dodge, Dunn, Eau Claire, Fond du Lac, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Lincoln, Marquette, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Pepin, Pierce, Polk, Portage, Racine, Richland, Rock, St. Croix, Sauk, Shawano, Trempealeau, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood.

**Phony Peach**

Alabama

(1) Entire State.

Arkansas

(1) Counties of Arkansas, Ashley, Bradley, Chicot, Columbia, Crittendon, Cross, Desha, Drew, Hempstead, Howard, Jefferson, Lafayette, Lee, Lincoln, Little River,

Miller, Monroe, Nevada, Phillips, Pike, Poinsett, St. Francis, Sevier, Union, and Woodruff.

Florida

(1) Entire State.

Georgia

(1) Entire State.

Kentucky

(1) County of McCracken.

Louisiana

(1) Parishes of Bienville, Bossier, Caddo, Claiborne, DeSoto, Jackson, Lincoln, Morehouse, Natchitoches, Ouachita, Red River and Union.

Mississippi

(1) Entire State.

Missouri

(1) County of Dunklin.

North Carolina

(1) Counties of Anson, Cumberland, Gaston, Hoke, Polk and Rutherford.

South Carolina

(1) Counties of Aiken, Allendale, Bamberg, Barnwell, Cherokee, Chesterfield, Edgefield, Greenville, Lancaster, Laurens, Lexington, Marlboro, Orangeburg, Richland, Saluda, Spartanburg, Sumter, and York.

Tennessee

(1) Counties of Chester, Crockett, Dyer, Fayette, Hardman, Hardin, Lake, Lauderdale, McNairy, Madison, and Weakley.

Texas

(1) Counties of Anderson, Bexar, Brazos, Cherokee, Freestone, Limestone, McLennan, Milan, Rusk, San Augustine, Smith, and Upshur.

**Citrus Canker**

*(Xanthomonas axonopodis pv. citri)*

Any areas designated as quarantined under the Federal Citrus Canker quarantine 7 CFR 301.75 et seq.

**Pine Shoot Beetle [*Tomicus piniperda* (L.)]**

Illinois

(1) Counties of Boone, Bureau, Cook, Champaign, De Kalb, De Witt, DuBage, Grundy, Iroquois, Kane, Kankakee, Kendall, La Salle, Lake, Lee, Livingston, Macon, McHenry, McLean, Ogle, Piatt, Platt, Putnam, Stephenson, Whiteside, Will, Winnebago, Woodford and Vermillion.

Indiana

(1) Counties of Adams, Allen, Benton, Blackford, Boone, Carroll, Cass, Clinton, Dekalb, Delaware, Elkhart, Fountain, Fulton, Grant, Hamilton, Hancock, Henry, Howard, Huntington, Jasper, Jay, Johnson, Kosciusko, Lagrange, Lake, LaPorte, Madison, Marion, Marshall, Miami, Montgomery, Newton, Noble, Parke, Porter, Pulaski, Randolph, Rush, Shelby, St. Joseph, Starke, Steuben, Tippecanoe, Tipton, Vermillion, Wabash, Warren, Wayne, Wells, White and Whitley.

Maine

(1) County of Oxford.

Maryland

(1) Counties of Allegany, Frederick, Garrett and Washington.

Michigan

(1) Counties of Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Chippewa, Cheboygan, Clare, Clinton,

Crawford, Delta, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkasa, Kent, Lake, Lenawee, Lapeer, Leelanau, Livingston, Luce, Mackinac, Macomb, Manistee, Marquette, Mason, Mecosta, Midland, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, Sanilac, Schoolcraft, Shiawassee, St. Clare, St. Joseph, Tuscola, Van Buren, Washtenaw, Wayne and Wexford.

New Hampshire

- (1) County of Coos.

New York

(1) Counties of Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Cortland, Delaware, Erie, Genessee, Jefferson, Lewis, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Schuyler, Seneca, Steuben, St. Lawrence, Tioga, Tompkins, Wayne, Wyoming and Yates.

Ohio

(1) Counties of Allen, Ashland, Ashtabula, Auglaize, Belmont, Butler, Cameron, Carroll, Champaign, Clark, Columbiana, Coshocton, Crawford, Cuyahoga, Darke, Defiance, Delaware, Erie, Fairfield, Fulton, Geauga, Greene, Guernsey, Hamilton, Hancock, Hardin, Harrison, Henry, Hocking, Holmes, Huron, Jefferson, Knox, Lake, Licking, Logan, Lorain, Lucas, Madison, Mahoning, Marion, Medina, Mercer, Miami, Montgomery, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pickaway, Portage, Preble, Putnam, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Vinton, Warren, Wayne, Williams, Wood and Wyndot.

Pennsylvania

(1) Counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Bradford, Butler, Cambria, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Somerset, Tioga, Venango, Warren, Washington and Westmoreland.

Vermont

- (1) Counties of Caladonia, Essex and Orleans.

West Virginia

- (1) The entire State.

Wisconsin

- (1) Counties of Grant, Green and Rock.

Any other areas designated as quarantined under the Federal Pine Shoot Beetle quarantine 7 CFR 301.50 et seq.

Matthew Keppinger III  
Assistant Commissioner  
and  
State Entomologist

Bob Odom  
Commissioner

0204#022

**POTPOURRI**

**Department of Agriculture and Forestry  
Structural Pest Control Commission**

One Day to Make a Difference

The Louisiana Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, is hereby giving notice of the site locations for the Louisiana Pest Control Association's One Day to Make a Difference Program. The following locations were adopted for the purpose of donating pest control services to individuals or organizations that are in need of, but unable to afford such services.

At the Structural Pest Control Commission meeting held on February 13, 2002, the Commission, as allowed by LAC 7:XXV.163, voted to allow pest control work to be conducted at the following locations during June 2002.

Name	Address	Phone #
Arna Bontemps Museum	1327 3rd. Street, Alexandria, LA 71301	318-473-4692

Bob Odom  
Commissioner

0204#030

**POTPOURRI**

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

Advanced Notice of Collection of Data for  
Regional Haze Program

Pursuant to the Clean Air Act of 1990, states must evaluate certain older, large emission units and determine whether these units require the installation of the best emission controls available as part of strategies for meeting the goals of the regional haze program. This requirement, known as the Best Available Retrofit Technology (BART) requirement, applies to emission units (individually or in combination with other such units) built roughly between 1962 and 1977 that have the potential to emit 250 tons per year or more of any visibility-impairing pollutant and must fall into one of 26 source categories. The applicable pollutants are ammonia, nitrogen oxides (NO<sub>x</sub>), particulate matter (PM<sub>10</sub>), sulfur dioxide (SO<sub>2</sub>), and volatile organic compounds (VOC's). The applicable source categories and other BART guidelines are identified in the U.S. Environmental Protection Agency's (EPA's) proposed BART rule.\*

LDEQ and the Central Regional Air Planning Association (CENRAP) are working in cooperation to identify BART-eligible sources in Louisiana. CENRAP requests that each

member state and tribe provide a list of all stationary sources with emission units identified under the BART guidelines. From this complete list of potential BART sources, the LDEQ will begin the process of identifying specific "BART-eligible" sources pursuant to Section 169A of the Clean Air Act and the EPA's proposed BART rule.\* As a part of this effort, the LDEQ will begin a comprehensive query of the Emissions Inventory System (EIS) database to provide preliminary identification of emissions units that are potential BART sources. This effort is the first step in a process that may take several months to complete. The first step will generate a large list of sources from which the BART-eligible sources will ultimately be extracted. LDEQ will eventually conduct a survey of the potential sources. LDEQ suggests that facilities individually begin preliminary research of their sources for possible BART eligibility.

\* "Proposed Guidelines for Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Regulations; Proposed Rule," 66 FR 38108-38135, July 20, 2001, No. 40 [available at [http://www.epa.gov/ttncaaa1/t1/fr\\_notices/bart6-21.pdf](http://www.epa.gov/ttncaaa1/t1/fr_notices/bart6-21.pdf)]

James H. Brent, Ph.D.  
Assistant Secretary

0204#035

## POTPOURRI

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

#### Section 112(j) A amendments

In the April 5, 2002, *Federal Register*, EPA promulgated revisions to Sections 112(g) and 112(j) of the Clean Air Act Amendments of 1990. The rule is titled, "National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)." (See 40 CFR Part 63, Subpart B.) The Louisiana Department of Environmental Quality (LDEQ) has incorporated by reference (IBR) the original federal regulation into the Louisiana Administrative Code. (See LAC 33:III.5122.A.) Prior to the April 5, 2002, amendments, the regulation required any facility/source whose source category Part 63 (MACT) Rule has not been promulgated by May 15, 2002, to submit a Title V permit application by that date.

Pursuant to the amendments to the federal regulation, facilities/sources need not submit an entire Title V application. Instead, the facilities/sources must submit a "Part 1" Permit Application by May 15, 2002. The newly promulgated rule may be found at the following web address: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002\\_register&docid=02-5861-filed.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-5861-filed.pdf).

The LDEQ has instituted rulemaking actions to update its IBR of the federal regulation to include the recent amendments. The LDEQ anticipates this rulemaking to be complete by May 20, 2002.

If a facility/source fails to submit an entire Title V permit application by May 15, 2002, there will be a 5 to 6day period when there will be a "technical violation" of the state rule (until the update of the state IBR of the federal regulation as amended is completed). However, facilities/sources should comply with the state rule as proposed by the LDEQ (i.e., the federal regulation as amended). Facilities/sources are advised that LDEQ will use our enforcement discretion and not take any enforcement action against anyone for submitting a "Part 1" application instead of the entire Part 70 application in accordance with existing rule.

James H. Brent  
Assistant Secretary

0204#036

## POTPOURRI

### Office of the Governor Division of Administration Office of Community Development

#### Notice of Public Hearings

As set forth in 24 CFR Part 91, the U. S. Department of Housing and Urban Development (HUD) requires state agencies which administer certain HUD programs to incorporate their planning and application requirements into one master plan called the Consolidated Plan. In Louisiana the four state agencies participating in this consolidated planning process and the HUD-funded program administered by each agency include the Division of Administration/Office of Community Development (Small Cities Community Development Block Grant Program), the Louisiana Housing Finance Agency (HOME Investment Partnerships Program), the Department of Social Services/Office of Community Services (Emergency Shelter Grants Program), and the Department of Health and Hospitals/HIV/AIDS Program (Housing Opportunities for Persons with AIDS Program). A summary of the four programs follows.

The Small Cities Community Development Block Grant Program provides financial assistance to parishes of less than 200,000 persons and municipalities with a population of less than 50,000 in their efforts to provide a suitable living environment, decent housing, essential community facilities, and expanded economic opportunities. Eligible activities include community infrastructure systems such as water, sewer, and street improvements, community centers, housing rehabilitation, and economic development assistance in the form of grants and loans. Projects funded under this program must principally benefit persons of low and moderate income.

The objectives of the Home Investment Partnerships Program are:

- to expand the supply of decent and affordable housing for low and very low income persons;
- to stabilize the existing deteriorating owner occupied and rental housing stock through rehabilitation;

- to provide financial and technical assistance to recipients/subrecipients; and
- to extend and strengthen partnerships among all levels of government and the private sector, including for-profit and nonprofit organizations, in the production and operation of affordable housing.

The purpose of the Emergency Shelter Grants Program is:

- to help local governments and community organizations to improve and expand shelter facilities serving homeless individuals and families;
- to meet the cost of operating homeless shelters;
- to provide essential services; and
- to perform homeless prevention activities.

The Housing Opportunities for Persons with AIDS Program provides localities with the resources and incentives to devise and implement long-term comprehensive strategies for meeting the housing needs of persons with acquired immuno-deficiency syndrome (AIDS) or related diseases and their families.

The four agencies implementing these programs are preparing their consolidated annual performance and evaluation report for the FY 2001 program year which ended March 31, 2002. The purpose of that document is to report on the progress the State has made in addressing the goals and objectives identified in its Consolidated Plan for FY 2000-FY 2004 and FY 2001 Consolidated Annual Action Plan.

The four agencies administering these programs are also beginning to prepare the Consolidated Annual Action Plan for FY 2003. The Consolidated Annual Action Plan will include a one year action plan for the proposed distribution of funds received under the FY 2003 federal funding allocation for the aforementioned four HUD programs.

The State will hold public hearings for a two-fold purpose regarding these programs.

The first purpose of the hearings will be to receive comments on the State's performance during the FY 2001 program year. Copies of the consolidated annual performance and evaluation report will be available for review and each agency will present a summary of its accomplishments as identified in the performance report. For those persons who are unable to attend the public hearings, copies of the performance report will be available for review beginning May 6, 2002, at the Office of Community Development, State Capitol Annex, 1051 North Third Street, Room 168 in Baton Rouge, at the Louisiana Housing Finance Agency at 200 Lafayette Street, Suite 300 in Baton Rouge, at the Department of Social Services/Office of Community Services at 333 Laurel Street, Room 821 in Baton Rouge, and at the Department of Health and Hospitals/HIV/AIDS Program Office at 234 Loyola Avenue, Fifth Floor in New Orleans. Written comments on the performance report may be submitted beginning May 6, 2002, and will be accepted until May 22, 2002. Comments may be mailed to the Office of Community Development, Post Office Box 94095, Baton Rouge, LA 70804-9095 or faxed to 225-342-1947.

The second purpose of the hearings will be to obtain views on the housing and community development needs throughout the State; those comments will assist the agencies in developing the Consolidated Annual Action Plan for FY 2003. For those persons who are unable to attend the public hearings, written comments on the needs of the State may be submitted beginning May 6, 2002, and will be accepted until May 22, 2002. Written comments may be mailed to the Office of Community Development, Post Office Box 94095, Baton Rouge, LA 70804-9095 or faxed to (225) 342-1947.

The public hearings will be held on May 6, 2002, at 1:30 p.m. in the meeting room of the West Baton Rouge Parish Library, 830 North Alexander Avenue, Port Allen, Louisiana, and at 1:30 p.m. on May 7, 2002, in the Council Chambers at the Pineville City Hall, 910 Main Street, Pineville, Louisiana. These facilities are accessible to persons with physical disabilities. Non-English speaking persons and persons with other disabilities requiring special accommodations should contact the Office of Community Development at (225) 342-7412 or TDD (225) 342-7422 or at the mailing address or fax number in the preceding paragraph at least five working days prior to each hearing.

Mark C. Drennen  
Commissioner of Administration

0204#080

## POTPOURRI

### Office of the Governor Ground Water Management Commission

#### Notice of Public Hearing

Pursuant to the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., as amended, on May 18, 2001, notice is hereby given that the Ground Water Management Commission (Commission) will conduct a public hearing on May 29, 2002, at 1:30 p.m. in the LaSalle Building, in the Conservation and Mineral Resources Hearing Room, 617 N. Third Street, Baton Rouge, LA 70802-5428.

At such hearing, the Commission will hear testimony relative to the proposed rule of Louisiana Administrative Code Title 33, Part IX, Chapters 31 through 35.

The rule is available for review in the Notice of Intent section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the proposed rule until 4:30 p.m., June 7, 2002, to Anthony J. Duplechin, Chief of Staff, Office of Conservation, P.O. Box 94275, Capitol Station, Baton Rouge, LA 70804-9275.

Karen K Gautreaux  
Chairperson

0204#027



**POTPOURRI**

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

Medicaid Administrative Claiming Program

In compliance with R.S. 46:2701 of the 2001 Regular Session of the Louisiana Legislature creating the Medicaid School-Based Administrative Claiming Trust Fund, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing (BHSF) announces the creation of the Medicaid Administrative Claiming Program for public school systems. BHSF recognizes that schools offer a unique advantage and opportunity to outreach potential Medicaid recipients and current recipients to assist them in accessing Medicaid covered services. School districts participating in the program must be enrolled Medicaid providers and must meet very specific requirements including entering into interagency agreements with BHSF and participating in approved uniform time study activities. BHSF will provide program administration and general oversight of the program. School Boards participating in the program must perform or coordinate its subcontractors' performance of Medicaid administrative activities on behalf of BHSF in order to improve the availability, accessibility, coordination and appropriate utilization of preventive and remedial health care resources to Medicaid eligible clients and their families. These activities shall be performed in accordance with the policies and procedures set forth in the Medicaid Administrative Claiming Program Mandatory Participation Requirements. School boards shall account for the activities of staff providing Medicaid administration in accordance with the provisions of OMB Circular A-87 and 45 CFR Part 74 and 95, the Medicaid Administrative Claiming Program Mandatory Participation Requirements, and with the written guidelines issued by BHSF.

Inquiries regarding Administrative Claiming and criteria for participation in the program may be directed to Program Operations, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030.

David W. Hood  
Secretary

0204#066

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
SSM Partnership	Olla	M	Kees B	1	149010
D&M Operating Company, Inc.	Ragley		VUA; Hollingsworth et al	1	203997
Got, Inc.	Monroe	M	Potts	1	008591
Got, Inc.	Monroe	M	Lamson	1	095800
Got, Inc.	Monroe	M	Miller	1	100446
Got, Inc.	Monroe	M	Miller	2	102060
Got, Inc.	Monroe	M	Rogers	1	106077
Got, Inc.	Monroe	M	Rogers	2	106162
Got, Inc.	Monroe	M	Harrington	1	106283
Got, Inc.	Monroe	M	Rogers	3	106647
Got, Inc.	Monroe	M	FWW	1	106831
Got, Inc.	Monroe	M	Mangham	1	107453
Got, Inc.	Monroe	M	Russell	1	108476
Got, Inc.	Monroe	M	Oaklawn Realty Inc.	1	108579
Got, Inc.	Monroe	M	MRK & Rowland	2	109068
Got, Inc.	Monroe	M	MRK & Rowland	4	109286
Got, Inc.	Monroe	M	SEAB	1	110546
Got, Inc.	Monroe	M	Harris	1	110762
Got, Inc.	Monroe	M	Murphy-MRK-Rowland	1	110948
Got, Inc.	Monroe	M	SEAB	2	111052
Got, Inc.	Monroe	M	Freeland-Odom	1	131543
Got, Inc.	Monroe	M	Freeland-Odom	2	132529
Got, Inc.	Monroe	M	Freeland-Odom	3	133252
Got, Inc.	Monroe	M	Gober	1	136509
Got, Inc.	Monroe	M	Wood	1	137134
Got, Inc.	Monroe	M	Freeland-Odom	2-D	137204
Got, Inc.	Monroe	M	Wood	2	137213
Got, Inc.	Monroe	M	Keith Babb	1	138094
Got, Inc.	Monroe	M	Potts	3	138251
Got, Inc.	Monroe	M	Miller	3	138325
Got, Inc.	Monroe	M	N A Mansour	1	142716
Got, Inc.	Monroe	M	Nathan Lowery	1	144336
Got, Inc.	Monroe	M	Oaklawn Realty Inc.	2	144465
Got, Inc.	Monroe	M	Miller	4	152027
Got, Inc.	Monroe	M	Miller	5	152028
Got, Inc.	Monroe	M	Miller	6	152029
Got, Inc.	Monroe	M	Miller	7	152122
Got, Inc.	Monroe	M	McInnis	2	153241
Got, Inc.	Monroe	M	McInnis	3	153242
Got, Inc.	Monroe	M	Archie A	1	163772
Got, Inc.	Monroe	M	Freeland-Odom	5	165637
Got, Inc.	Monroe	M	Freeland-Odom	6	165745
Got, Inc.	Monroe	M	Freeland-Odom	7	165746
Got, Inc.	Monroe	M	Archie A	2	165919
Got, Inc.	Monroe	M	Freeland-Odom	8	165925
Got, Inc.	Monroe	M	Freeland-Odom	9	165926
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Got, Inc.	Monroe	M	Archie A	4	166019
Got, Inc.	Monroe	M	Archie A	5	166042

Got, Inc.	Calvin	M	WX RB SUHH; Thomas Durham	2	177167
Russell D Stayton	Monroe	M	Stayton	1	098782
Procell & Procell	Converse	S	E W Patrick	1	074450
Procell & Procell	Grand Cane	S	Lee Hollowell	1	099015
Procell & Procell	Grand Cane	S	H G Hollowell	1	099544
Procell & Procell	Grand Cane	S	Boise Southern	2	167417
Procell & Procell	Canadian Bayou	S	Boise Southern D	2	168248
Procell & Procell	Grand Cane	S	Boise Southern	3	168687
Procell & Procell	Grand Cane	S	Boise Southern	5	171958
Procell & Procell	Grand Cane	S	Boise Southern A	1	173636
Procell & Procell	Spider	S	Hutchins	1	180077
Procell & Procell	Spider	S	Storey	1	180078
Procell & Procell	Grand Cane	S	Boise Southern	8	180098
Procell & Procell	Grand Cane	S	Cross A	1	181527
Procell & Procell	Spider	S	Hunter	1	182989
Procell & Procell	Grand Cane	S	VUA; Dean	1	184376
Procell & Procell	Spider	S	Cook	1	184540
Procell & Procell	Spider	S	Cook	2	184541
Procell & Procell	Spider	S	Hutchins	4	184542
Procell & Procell	Mansfield	S	Inter- national Paper K	1	186694
Procell & Procell	Spider	S	Pugh	1	188238
Procell & Procell	Spider	S	Hunter	2	190020
Procell & Procell	Spider	S	Brown V	1	190725
Procell & Procell	Spider	S	Cook A	1	210510
Womack Production Co.	La- peyrouse	S	A Eschete et al	1	179320
Jack Corman	South Bancroft	L	1 ST CFSUA; Lutcher Moore	1	128417
Charles Blaney	Vidalia	M	Blaney	1	213034
W E Booth	Monroe	M	Booth	1	039284
Lula M Day	Monroe	M	W Day et al	1	079825
Donald Slater	Monroe	M	Pilgreen Greer	1	095249
Onnin Dickson	Monroe	M	Dickson	1	103358
Mrs. R.E. Dodd	Monroe	M	R.E. Dodd	1	089583
J.C. Chance, Jr.	Starks	L	Industrial Lumber Co	1	071449
D.G. Hamilton	Nebo- Hemphill	M	WX A RB SU130; Evans	2	176421 (30)

Wm. Grant et al	Caddo Pine Island	S	Trenado	1	105329
Converse Workover Company, Inc.	Grand Cane	S	F.A. Hoell	1	056769
Converse Workover Company, Inc.	Grand Cane	S	VUA; F A Hoell	1-D	218664

Facility Name	Location	Parish	Well Name	Well Number	Serial Numbe r
J&R Systems, Inc.	Golden Grain Road (La. Hwy. 342), Rayne, LA	Lafayette	Delma Hanks SWD	2	972332

Felix J. Bourdreaux  
Commissioner

0204#037

**POTPOURRI**

**Department of Natural Resources  
Office of the Secretary**

**Fishermen's Gear Compensation Fund**

In accordance with the provisions of R.S. 56:700.1 et. seq., notice is given that 16 claims in the amount of \$53,105.63 were received for payment during the period March 1, 2002-March 31, 2002. There were 16 claims paid and 0 claims denied.

Loran Coordinates of reported underwater obstructions are:

27001	46952	Jefferson
27093	46948	Vermilion
28286	46857	Terrebonne
28611	46853	Jefferson
29102	46849	Plaquemines
29153	47055	Orleans

Latitude/Longitude Coordinates of reported underwater obstructions are:

2903.190	8914.510	Plaquemines
2904.619	8922.692	Plaquemines
2909.250	9005.420	Lafourche
2912.260	9027.580	Terrebonne
2915.720	8957.791	Jefferson
2922.948	9114.833	Lafourche
2924.358	9003.424	Jefferson
2953.124	8945.128	St Bernard
2956.979	9320.203	Cameron
2958.197	8918.860	St Bernard

A list of claimants and amounts paid can be obtained from Verlie Wims, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Jack C. Caldwell  
Secretary

0204#072

**POTPOURRI**  
**Department of Revenue**  
**Severance Tax Division**

Natural Gas Severance Tax Rate

The natural gas severance tax rate effective July 1, 2002, through June 30, 2003, has been set at 12.2 cents per thousand cubic feet (MCF) measured at a base pressure of 15.025 pounds per square inch absolute and at the temperature base of 60 degrees Fahrenheit.

This tax rate is set each year by multiplying the natural gas severance tax base rate of 7 cents per MCF by the "gas base rate adjustment" determined by the Secretary of the Department of Natural Resources in accordance with R.S. 47:633(9)(d)(i). The "gas base rate adjustment" is a fraction of which the numerator is the average of the monthly spot market price of gas fuels delivered into the pipelines in Louisiana as reported in the Natural Gas Clearing House (now Dynegy Inc.) for the previous 12-month period ending March 31, and the denominator is the average of the monthly

spot market price of gas fuels delivered into the pipelines in Louisiana as reported by the Natural Gas Clearing House for the 12-month period ending March 31, 1990.

Based on this computation, the Secretary of the Department of Natural Resources has determined the natural gas severance "gas base rate adjustment" for July 1, 2002, through June 30, 2003, to be 173.90 percent. Applying this gas base rate adjustment to the base tax rate of 7 cents per MCF results in a gas tax rate of 12.2 cents per MCF effective July 1, 2002, through June 30, 2003. The reduced natural gas severance tax rates provided for in R.S. 47:633(9)(b) and (c) remain the same.

The "gas base rate adjustment" and the "gas tax rate" are being published as required by R.S. 47:633(9)(d)(i). Questions concerning the natural gas severance tax rate should be directed to Carl Reilly, Director, Severance Tax Division, at (225) 219-2476.

Cynthia Bridges  
Secretary

0204#021

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