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# Executive Orders

## EXECUTIVE ORDER KBB 07-10

### Small Purchase Procedures

WHEREAS, the Louisiana Procurement Code, in R.S. 39:1596, authorizes the governor to establish procedures for the procurement of small purchases with the caveat that "procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section";

WHEREAS, the Louisiana Procurement Code exempts small purchases from the competitive sealed bidding requirements of the code; and

WHEREAS, Louisiana businesses are a driving force in the Louisiana economy;

WHEREAS, Executive Order No. KBB 2004-30 signed on August 20, 2004, established the procedure for the procurement of small purchases in accordance with the statutory guidelines of the Louisiana Procurement Code; and

WHEREAS, it is necessary to rescind and terminate Executive Order No. KBB 2004-30 through the issuance of a replacement executive order;

NOW THEREFORE I, Kathleen Babineaux Blanco, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: All departments, institutions, boards, commissions, budget units, and agencies of the executive branch of state government, and the officers and employees thereof, (hereafter "agency") shall observe, be guided by, and implement the specific directives on small purchase procedures set forth in this Order. This Order in no way affects or changes the purchasing authority delegated to an agency by the chief procurement officer as defined in R.S. 39:1556(3). No provision of this Order shall be construed as a limitation on the number of quotations to be solicited prior to making a purchase or procurement. Louisiana businesses, especially small and emerging businesses and small entrepreneurship, should be utilized to the greatest extent possible when soliciting prices.

SECTION 2: Unless the context clearly indicates otherwise, the words and terms used in this Order shall be defined as follows:

A. "Small purchases" means (1) any procurement not exceeding twenty-five thousand dollars (\$25,000), or (2) any procurement of those items listed in Section 5 of this Order, regardless of price, except as noted in Paragraphs 5(A)(14), 5(A)(24) and 5(A)(26), which are exempt from the competitive sealed bidding requirements of the Louisiana Procurement Code.

B. "Certified small and emerging business" means a business certified as a small and emerging business by the Division of Small and Emerging Business Development, Department of Economic Development, in accordance with the Provisions of the Small and Emerging Business Development Program, R.S. 51:941, *et seq.*, and included on the most recent list of certified small and emerging

businesses issued by the Division of Certified Small and Emerging Business Development;

C. "Small Entrepreneurship" means a business certified as a small entrepreneurship by the Department of Economic Development, in accordance with the Provisions of the Louisiana Initiative for Small Entrepreneurships (Hudson Initiative), R.S. 39:2006.B; and

D. "Louisiana authorized dealer" means a company that satisfies the requirements of a resident business defined in R.S. 39:1591(6) and is authorized by the manufacturer to sell and/or provide service for their products.

SECTION 3: The following items are not subject to the procedures set forth in this Order:

A. Those items covered by an existing state contract, and

B. Public works contracts which exceed five thousand dollars (\$5,000) and are governed by the provisions of R.S. 38:2241.

SECTION 4: Except as otherwise provided in this Order, all small purchases shall be made in accordance with the following minimum procedures:

A. No competitive process is required for purchases not exceeding one thousand dollars (\$1,000) per single purchase transaction.

B. Price quotations shall be solicited from three (3) or more bona fide, qualified vendors for purchases exceeding one thousand dollars (\$1,000) but not exceeding five thousand dollars (\$5,000).

1. Quotations may be made by telephone, facsimile, or other means and shall be awarded on the basis of the lowest responsive quotation. Whenever possible, at least one (1) of the bona fide, qualified vendors shall be a certified small and emerging business or a small entrepreneurship. Agency files shall document and list all solicited vendors and each vendor's contact person, summarize quotations received, indicate the successful vendor and state the reason why any lower quotation was rejected. Agency files should also contain written confirmation of the quotation from the successful vendor; or

2. Soliciting three quotations may be waived when making purchases from a Small Entrepreneurship or Small and Emerging Business that is currently certified by the Louisiana Department of Economic Development, when the price is determined to be reasonable. Reasonable is a best value determination based on price, delivery, service, and/or any other related factors. This determination is to be maintained in the file, or;

3. Soliciting three quotations may be waived when purchasing in-state. A business analysis must determine that in-state prices are equal or better than two other current price comparisons. Comparisons may include, but are not limited to, state contract prices, General Services Administration (GSA) prices, or similar resources. Comparison documents are to be maintained in the file.

C.1. Price quotations shall be solicited from five (5) or more bona fide, qualified vendors for purchases exceeding five thousand (\$5,000) but not exceeding twenty-

five thousand dollars (\$25,000). Quotations may be made by facsimile or written means and shall be awarded on the basis of the lowest responsive price quotation received. Whenever possible, at least two (2) of the bona fide, qualified vendors shall be certified small and emerging businesses or small entrepreneurs. The requirement to solicit certified small and emerging businesses or small entrepreneurs is waived for those agencies that post on LaPAC, Louisiana's internet based system for posting vendor opportunities and award information.

2. A minimum of three (3) working days shall be allowed for receipt of quotations.

3. All written or facsimile solicitations shall include the closing date, time, and all pertinent competitive specifications, including quantities, units of measure, packaging, delivery requirements, ship-to location, terms and conditions, and other information sufficient for a supplier to make an acceptable quotation. Precautionary measures shall be taken to safeguard the confidentiality of vendor responses prior to the closing time for receipt of quotations. No quotation shall be evaluated using criteria not disclosed in the solicitation.

4. Agency files shall document and list all solicited vendors and each vendor's response, summarize quotations received, indicate the awarded quotation, and state the reason why any lower quotation was rejected.

SECTION 5: Except as provided in subsection A(14), A(24), or A(26) of this section, the following items are considered small purchases regardless of price and may be procured in the following manner:

A. No competitive process is required for the following items:

1. Repair parts for equipment obtained from a Louisiana authorized dealer where available. This provision does not apply to the stocking of parts;

2. Equipment repairs from an authorized dealer. A Louisiana authorized dealer shall be used if available;

3. Vehicle repairs not covered by a competitive state contract or the state fleet maintenance repair contract, obtained from a Louisiana authorized dealer where available;

4. Vehicle body repairs covered by insurance recovery and in accordance with insurance requirements;

5. Livestock purchased at public auction;

6. Purchasing or selling transactions between state budget units and other governmental agencies;

7. Publications and/or copyrighted materials purchased directly from the publisher or copyright holder, and web based subscription services;

8. Publications and/or copyrighted materials purchased by libraries or text rental stores from either subscription services or wholesale dealers which distribute for publishers and/or copyright holders;

9. Public utilities and services provided by local governments;

10. Prosthetic devices, implantable devices, and devices for physical restoration, which are not covered by a competitive state contract;

11. Educational training and related resources (except equipment) used to enhance the performance of state employees and good standing of state agencies, including memberships in and accreditations by professional societies

and organizations, except for customized training which is covered under R.S. 39:1481, et seq.;

12. Purchases for clients of Blind and Vocational Rehabilitation programs not covered by competitive state contract which are federally funded at a rate of at least 78.7%, regulated by Title 34, Parts 361, 365, 370, and 395 of the Code of Federal Regulations, and in accordance with OMB Circular A-102;

13. Materials, supplies, exhibitor fees, and exhibit booths at conferences, seminars, and workshops, for participation in promotional activities which enhance economic development may be procured in accordance with this section with the approval of the department secretary, or agency equivalent, if not covered by competitive state contract;

14. Wire, related equipment, time and material charges to accomplish repairs, adds, moves, and/or changes to telecommunications systems not exceeding two thousand five hundred dollars (\$2,500).

15. Working class animals trained to perform special tasks, including but not limited to narcotics detection, bomb detection, arson investigation, and rescue techniques;

16. Food, materials and supplies for teaching and training where the purchasing, preparing, and serving of food is part of the regularly prescribed course;

17. Shipping charges and associated overseas screening and broker fees from an international origin to a domestic destination;

18. Parcel services, including but not limited to Federal Express, United Parcel Service, Airborne Express, and Express Mail;

19. Renewal of termite service contracts;

20. Purchase of supplies, operating services, or equipment for Louisiana Rehabilitation Services, Traumatic Head and Spinal Cord Injury Trust Fund Program. Although competitive bidding is not required under this paragraph, whenever practicable, three (3) quotations from bona fide, qualified vendors should be obtained. Whenever possible, and at least one (1) of the bona fide, qualified vendors shall be a certified small and emerging business or a small entrepreneurship;

21. Purchasing of clothing at retail necessary to individualize clients at state developmental centers in compliance with Federal Regulations for ICF/MR facilities;

22. Health insurance for the managers of Randolph-Sheppard programs, as defined by 20 U.S.C. §107, *et seq.*, and paid from income generated by unmanned vending locations;

23. Purchases made to resell as part of a merchandising program with the written approval on file from the secretary of the department, or agency equivalent, when it is not practical or feasible to obtain competitive price quotations;

24. Commercial Internet Service not exceeding one thousand five hundred dollars (\$1,500) per subscription per year;

25. Advertising, where permitted by law and the head of an agency or designee certifies that specific media is required to reach targeted audiences; or

26. Scientific and laboratory supplies and equipment when procured by colleges and universities for

laboratory or scientific research not to exceed twenty-five thousand dollars (\$25,000) per transaction; or

27. Publication of articles, manuscripts, etc. in professional scientific, research, or educational journals/media and/or the purchase of reprints;

B. For the following items, telephone or facsimile price quotations shall be solicited, where feasible, to at least three (3) bona fide, qualified vendors. Whenever possible, at least one (1) of the bona fide, qualified vendors shall be a certified small and emerging business or a small entrepreneurship.

1. Farm products including, but not limited to, fresh vegetables, milk, eggs, fish, or other perishable foods, when it is determined that market conditions are unstable and the competitive sealed bidding process is not conducive for obtaining the lowest prices;

2. Food, materials, and supplies needed for:

a. Operation of boats and/or facilities in isolated localities where only limited outlets of such supplies are available; and/or

b. Juvenile detention homes and rehabilitation facilities/homes where the number of inmates, students, or clients is unstable and unpredictable;

3. Convention and meeting facilities; (However, any associated food or lodging must be in accordance with Policy and Procedure Memorandum No. 49—General Travel Regulations);

4. Gasoline and fuel purchases not covered by competitive state contract;

5. Equipment for blind operated facilities not covered by competitive state contract;

6. Feed commodities, including but not limited to soybean meal, cottonseed meal, and oats for use on prison farms;

7. Aircraft parts, repairs, inspections, and modifications approved by the head of the agency, head of Division of Administration Flight Operations, or its designee and performed by an FAA-certified mechanic and/or at an FAA-certified repair station in accordance with FAA requirements; or

8. Air and bus charters in accordance with PPM 49, including group travel that does not qualify for commercial rates available to individual travelers.

**SECTION 6:** In the absence of a good faith business basis, no purchase or procurement shall be artificially divided within a cost center, or its equivalent, to avoid the competitive process or the solicitation of competitive sealed bids.

**SECTION 7:** All departments, commissions, boards, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in the implementation 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 26th day of April, 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0705#062

### EXECUTIVE ORDER KBB 07-11

Louisiana Offshore Terminal Authority to Administer  
the Federal Deepwater Port Act for Louisiana

WHEREAS, WHEREAS, the federal Deepwater Port Act, 33 U.S.C. Sec. 1501, et seq., provides for the application for, and the construction and operation of deepwater ports or offshore terminal facilities beyond the seaward boundaries of Louisiana, for the transportation, storage or further handling of oil or natural gas;

WHEREAS, the state of Louisiana, to the extent that it is considered an adjacent coastal state, has been granted certain rights, duties, and responsibilities by the Deepwater Port Act in connection with the application for, and construction and operation of, such deepwater ports;

WHEREAS, there is a need for a single state agency to supervise, coordinate, and direct the state's duties and responsibilities in connection with implementation of the Deepwater Port Act;

WHEREAS, the Louisiana Offshore Terminal Authority was created by La. R.S. 34:3101, et seq., to promote, plan, finance, develop, construct, control, license, regulate, supervise, operate, manage, maintain and modify offshore terminal facilities within its jurisdiction;

WHEREAS, the Deepwater Port Act has extended the jurisdiction of the state of Louisiana to adjacent offshore waters beyond state boundaries for the limited and exclusive purposes as stated in the Act; and,

WHEREAS, the Louisiana Offshore Terminal Authority has continuously demonstrated its competence and expertise in the operation, monitoring, and regulation of the Louisiana Offshore Oil Platform ("LOOP");

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

**SECTION 1:** The Louisiana Offshore Terminal Authority is hereby designated as the single state agency which, subject to the powers and duties reserved to the Governor, shall administer and supervise the rights, duties and responsibilities of the state of Louisiana under the federal Deepwater Port Act.

**SECTION 2:** The rights, duties and responsibilities to be supervised and administered by the Louisiana Offshore Terminal Authority shall include, but are not necessarily limited to, those contained in 33 U.S.C. Sec. 1504(h)(2) and 33 U.S.C. Sec. 1508, except for those powers expressly reserved to the Governor under 33 U.S.C. Sec. 1502 (10)

and Sec. 1508(b)(1) relative to the Governor's authority to approve, disapprove, or conditionally approve pending applications. All required notices from the U.S. Coast Guard or the secretary of the U.S. Department of Transportation under the Deepwater Port Act, shall continue to be sent directly to the Governor, whose office shall provide same to the Louisiana Offshore Terminal Authority.

SECTION 3: The rights, duties and responsibilities to be administered and supervised by the Louisiana Offshore Terminal Authority in connection with the Deepwater Port Act shall include, but shall not necessarily be limited to, the following:

A. Upon receipt from the Governor of an application made under the Deepwater Port Act for the construction and operation of a deepwater port or offshore terminal facility, the Louisiana Offshore Terminal Authority shall coordinate and supervise the review by the state of such application, including coordination with other necessary state agencies, including the Department of Environmental Quality, the Department of Wildlife and Fisheries, and the Department of Natural Resources. The review shall include all environmental impact statements submitted, the impact on the coastal environment, the impact on the inshore and offshore waters and fisheries of the state, the impact on navigation, examination of monitoring plans, and such other reviews as the Louisiana Offshore Terminal Authority may deem necessary to assure the protection of the state and its resources.

B. Formulation and implementation of any necessary environmental monitoring and security plans, in cooperation with the operator, federal agencies, and state agencies.

C. Coordination with other adjacent coastal states and any other states impacted by the construction and operation of a deepwater port facility.

D. Letting of necessary contracts in connection with environmental monitoring, security, and such other necessary services as may be required by the Louisiana Offshore Terminal Authority in connection with the application for, or construction and operation of, deepwater ports under the Deepwater Port Act. Such contracts shall be let in accordance with law, and specifically in accordance with the requirements of the Louisiana Offshore Terminal Authority implementing legislation, La. R.S. 34:3101, *et seq.*

E. Upon completing necessary reviews of an application for construction of a deepwater port facility, report its findings and recommendations to the Governor so as to allow the Governor adequate information upon which to exercise, in a timely manner, the Governor's authority under 33 U.S.C. Sec. 1508(b)(1) to approve, disapprove, or conditionally approve a pending application.

F. In accordance with the provisions of 33 U.S.C. Sec. 1504(h)(2), obtain compensation for any economic cost incurred by the state of Louisiana in fulfilling its duties and responsibilities in connection with the construction and operation of any deepwater port facility, by fixing and collecting reasonable fees for the use of a deepwater port facility and for use of land-based facilities directly related to a deepwater port facility, subject to the approval of the secretary of the U.S. Department of Transportation.

SECTION 4: For the Louisiana Offshore Terminal Authority to carry out its responsibilities as ordered herein, subject to the availability of funding, the Louisiana Offshore Terminal Authority shall have the authority to establish an office with appropriate staff and facilities; to develop and implement an operational plan; to develop and implement a communications plan; to work with industry with regard to homeland security, safety, and hurricane-preparedness plans; to construct and implement a budget, including performance-based budgeting; to institute monitoring and reporting timelines and guidelines in compliance with the Deepwater Port Act and other applicable law; and generally to do and implement any other necessary and appropriate measures to allow the Louisiana Offshore Terminal Authority to function effectively, in accordance with law, and specifically in accordance with the provisions of La. R.S. 34:3101, *et seq.*

SECTION 5: All departments, boards, commissions, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of this Order.

SECTION 6: This Order is effective upon signature and shall apply 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 26th day of April, 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0705#063

#### EXECUTIVE ORDER KBB 07-12

##### Inmate Labor

WHEREAS, R.S. 15:832.1, as enacted in Act No. 933 of the 1988 Regular Session of the Louisiana Legislature, provides that the governor, upon determining that it is appropriate and in furtherance of the rehabilitation and training of inmates, may, by executive order, authorize the use of inmates of a penal or correctional facility owned by the state of Louisiana for necessary labor in connection with a particular capital construction project on the grounds of the facility; and

WHEREAS, the Department of Public Safety and Corrections, Corrections Services, seeks to utilize inmate labor to assist in the construction of non-denominational chapels to help enhance the rehabilitation and training of incarcerated inmates through the Department's faith-based initiatives;



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

SECTION 1: In furtherance of the goals of the state of Louisiana of rehabilitating inmates, reducing recidivism, and reintegrating inmates into society, inmate labor is hereby authorized to build non-denominational chapels at B.B. "Sixty" Rayburn Correctional Center in Angie, Louisiana and the Forcht-Wade Correctional Center in Keithville, Louisiana.

SECTION 2: 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 30th day of April 2007.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
0705#064

# Emergency Rules

## DECLARATION OF EMERGENCY

Department of Agriculture and Forestry  
Office of Agriculture and Environmental Sciences

ULV Malathion (LAC 7:XXIII.145)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953 (B), and under the authority of R.S. 3:3203, the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached rules and regulations for the application of an ultra low volume insecticide to be applied to cotton fields infested with plant bugs.

The applications of insecticides in accordance with the current concentration regulations have not been sufficient to control plant bugs. Failure to allow the concentrations in ultra low volume (ULV) malathion applications will allow the plant bugs the opportunity to destroy the cotton during the growing season, effectively destroying the cotton crop. The destruction of the cotton crop or a substantial portion of the cotton crop will cause irreparable harm to the economy of Northern Louisiana and to Louisiana Agricultural producers thereby creating an imminent peril to the health and safety of Louisiana citizens.

This Emergency Rule becomes effective upon the signature of the commissioner, April 24, 2007 and shall expire at 11:59 p. m. on August 21, 2007.

### Title 7

## AGRICULTURE AND ANIMALS

### Part XXIII. Pesticide

#### Chapter 1. Advisory Commission on Pesticides

#### Subchapter I. Regulations Governing Application of Pesticides

#### §145. Fixed Wing Aircraft; Standards for Commercial Aerial Pesticide Applications

A. - A.5.b.xxxvi. ...

c. malathion insecticide applied with the following conditions to control plant bugs in cotton:

i. the commissioner hereby declares that prior to making any aerial application of ULV malathion to cotton, the aerial owner/operator must first register such intent by notifying the Division of Pesticides and Environmental Programs ("DPEP") in writing. Upon notification, LDAF shall inspect the aircraft prior to any ULV applications;

ii. spray shall be applied, handled, and stored in accordance with all conditions specified by state or federal regulations, including the strict observance of any buffer zones that may be implied;

iii. aerial applicators shall strictly comply with any and all restrictions or mitigative factors, in regard to sensitive areas, including occupied buildings (churches, schools, hospitals, and homes), lakes, reservoirs, farm ponds, parks, and recreation areas that may be identified by commissioner, and such restriction and mitigation are to be

strictly complied with and observed by said aerial applicators;

iv. aerial applicators will adjust flight patterns, to the degree possible, to avoid or minimize flying over sensitive areas. This restriction does not apply to over flight between take-off and the commencement of spray operations, or over flight between termination of spray operations and landing;

v. aerial applicators shall be alert to all conditions that could cause spray deposit outside field boundaries and use their good faith efforts, including adjustment or termination of operations, to avoid spray deposit outside field boundaries;

vi. aerial spraying shall not be conducted when wind velocity exceeds 10 m.p.h;

vii. aerial applicators will terminate application if rainfall is imminent;

viii. insecticide spray will not be applied in fields where people or animals are present. It is the applicator's responsibility to determine if people are present prior to initiating treatment;

ix. spraying shall not be conducted in fields where other aircraft are working;

x. all mixing, loading, and unloading will be in an area where an accidental spill can be contained and will not contaminate a stream or other body of water;

xi. all aerial applications of insecticide shall be at an altitude not to exceed 5 feet above the cotton canopy. However, in fields that are not near sensitive areas, if infield obstructions make the 5-foot aerial application height not feasible, then the aerial height may be extended to such height above the cotton canopy as is necessary to clear the obstruction safely;

xii. the aircraft tank and dispersal system must be completely drained and cleaned before loading. All hoses shall be in good condition and shall be of a chemical resistant type;

xiii. insecticide tank(s) shall be leak-proof and spray booms of corrosion resistant materials, such as stainless steel, aluminum, or fiberglass. Sealants will be tested before use;

xiv. the tank(s) in each aircraft shall be installed so the tank(s) will empty in flight. Sight gauges or other means shall be provided to determine the quantity contained in each tank before reloading;

xv. a drain valve shall be provided at the lowest point of the spray system to facilitate the complete draining of the tanks and system while the aircraft is parked so any unused insecticide can be recovered;

xvi. a pump that will provide the required flow rate at not less than 40 pounds per square inch (psi) during spraying operation to assure uniform flow and proper functioning of the nozzles. Gear, centrifugal or other rotary types, will be acceptable on aircraft with a working speed above 150 miles per hour;

xvii. ULV spraying systems with a pumping capacity that exceeds the discharge calibration rate shall have the bypass flow return to the tank bottom in a manner that prevents aeration and/or foaming of the spray formulation. Pumps utilizing hydraulic drive or other variable speed drives are not required to have this bypass, provided the pump speed is set to provide only the required pressure and the system three-way valve is used for on/off control at full throw position. Any bypass normally used to circulate materials other than the ULV will be closed for ULV spraying;

xviii. spray booms will be equipped with the quantity and type of spray nozzles specified by the Boll Weevil Eradication Program. The outermost nozzles (left and right sides) shall be equal distance from the aircraft centerline and the distance between the two must not exceed three-fourths of the overall wing span measurement. For helicopters, the outermost nozzles must not exceed three-fourths of the rotor span. For both fixed wing and helicopters, the program will accept the outermost nozzles between 60 percent and 75 percent of the wingspan/rotor span. Longer spray booms are acceptable provided modifications are made to prevent the entrapment of air in the portion beyond the outermost nozzle. Fixed wing aircraft not equipped with a drop type spray boom may require drop nozzles in the center section that will position the spray tips into smoother air to deliver the desired droplet size and prevent spray from contacting the tail wheel assembly and horizontal stabilizer. Most helicopters will be required to position the center nozzles behind the fuselage and dropped into smooth air in order to achieve the desired droplet size;

xix. nozzles, diaphragms, gaskets, etc., will be inspected regularly and replaced when there is evidence of wear, swelling, or other distortion in order to assure optimum pesticide flow and droplet size. Increasing pressure to compensate for restricted flow is unacceptable. A positive on/off system that will prevent dribble from the nozzles is required;

xx. a positive emergency shut-off valve between the tank and the pump, as close to the tank as possible. This valve shall be controllable from the cockpit and supplemented by check valves and flight crew training which will minimize inadvertent loss of insecticide due to broken lines or other spray system malfunction;

xxi. bleed lines in any point that may trap air on the pressure side of the spraying system;

xxii. an operational pressure gauge with a minimum operating range of 0 to 60 psi and a maximum of 0 to 100 psi visible to the pilot for monitoring boom pressure;

xxiii. a 50-mesh in-line screen between the pump and the boom and nozzle screens as specified by the nozzle manufacturer;

xxiv. aircraft equipped so nozzle direction can be changed from 45 degrees down and back to straight back when it is necessary to change droplet size;

xxv. all nozzles not in use must be removed and the openings plugged;

xxvi. nozzle tips for all insecticides shall be made of stainless steel;

xxvii. aircraft shall have an operational Differentially Corrected Global Positioning System (DGPS) and flight data logging software that will log and display the date and time of the entire flight from take-off to landing and differentiate between spray-on and spray-off;

xxviii. aircraft shall have a DGPS with software designed for parallel offset in increments equal to the assigned swath width of the application aircraft. Fixed towers, portable stations, satellite, Coast Guard, or other acceptable methods may provide differential correction. However, the differential signal must cover the entire project area. In fringe areas from the generated signal, an approved repeater may be used. The system shall be sufficiently sensitive to provide immediate deviation indications and sufficiently accurate to keep the aircraft on the desired flight path with an error no greater than 3 feet. Systems that do not provide course deviation updates at one-second intervals or less will not be accepted;

xxix. a course deviation indicator (CDI) or a course deviation light bar (also CDI) must be installed on the aircraft and in a location that will allow the pilot to view the indicator with direct or peripheral vision without looking down. The CDI must be capable of pilot selected adjustments for course deviation indication with the first indication at 3 feet or less;

xxx. the DGPS must display to the pilot a warning when differential correction is lost, the current swath number, and cross-track error. The swath advance may be set manually or automatically. If automatic is selected, the pilot must be able to override the advance mode to allow respraying of single or multiple swaths;

xxxi. the DGPS must be equipped with a software for flight data logging that has a system memory capable of storing a minimum of 3 hours of continuous flight log data with the logging rate set at one second intervals. The DGPS shall automatically select and log spray on/off at one-second intervals while ferry and turnaround time can be two-second intervals. The full logging record will include position, time, date, altitude, speed in M.P.H., cross-track error, spray on/off, aircraft number, pilot, job name or number, and differential correction status. The flight data log software shall be compatible with DOS compatible PC computers, dot matrix, laser, or ink jet printers and plotters. The system must compensate for the lag in logging spray on/off. The system will display spray on/off at the field boundary without a sawtooth effect. Must be capable to end log files, rename, and start a new log in flight;

xxxii. the software must generate the map of the entire flight within a reasonable time. Systems that require five minutes or more to generate the map for a 3-hour flight on a PC (minimum a 386 microprocessor with 4 MB of memory) will not be accepted. The flight path must clearly differentiate between spray on and off when viewed on the monitor or the printed hard copy. The software must be capable of replaying the entire flight in slow motion; stopping and restarting the replay at any point during the flight; zooming to any portion of the flight for viewing in greater detail and printing the entire flight or the zoomed-in portion. It must have a measure feature that will measure

distance in feet between swaths or any portion of the screen and to be able to determine the exact latitude/longitude at any point on the monitor;

xxxiii. flight information software provided by the applicator must have the capability to interface with MapInfo (version 3.0 or 4.0). The interface process must be "user friendly", as personnel will be responsible to operate the system in order to access the information;

xxxiv. application of ULV malathion shall be at an application rate of 12 oz. per acre with no dilutions or tank mixes;

xxxv. applications of ULV malathion shall be restricted to seven day intervals.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 21:927 (September 1995), LR 26:1964 (September 2000), LR 33:

Bob Odom  
Commissioner

0705#017

## DECLARATION OF EMERGENCY

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

#### Fluoroquinolones in Seafood (LAC 7:XXXV.511)

This Rule is being adopted in accordance with R.S. 3:2A, 3:3B, R.S. 3:4608 and the emergency rule provisions of R.S. 49:953 B of the Administrative Procedure Act.

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rule declaring the country of China to be a geographic area where Fluoroquinolones is being used on or found in food producing animals or in products from such animals. The commissioner has reason to believe that China is a geographic area where Fluoroquinolones is being used on or found in food producing animals or in products from such animals because Mississippi and Alabama have found Fluoroquinolones in fish from China. Additionally, testing by the department has resulted in positive testing of fish from china for the presence of Fluoroquinolones.

Fluoroquinolones is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only. The FDA banned the extra label use of Fluoroquinolones in food producing animals in 1997 after determining that such use presented a risk to the public health. That ban is still in effect, see 21 CFR 530.41. "Extra label use" means "actual use or intended use of a drug in an animal in a manner that is not in accordance with the approved labeling," see 21 CFR 530.3(a).

Since, the FDA has not established a safe level, tolerance level or safe concentration for Fluoroquinolones there is a zero tolerance level for Fluoroquinolones. Therefore, foods in which Fluoroquinolones are found are adulterated foods under the United States and Louisiana Food, Drug, and Cosmetics Acts.

Fluoroquinolones have been known to cause hypersensitivity or allergic reactions, toxicity-related reactions, and to an increased prevalence of infections due to antibiotic-resistant microorganisms. Hypersensitivity reactions can include life-threatening anaphylaxis, as well as urticaria, dermatitis, vomiting, and diarrhea. There is a significant chance that these reactions may be attributed to other factors, thereby causing a misdiagnosis, and subsequent mistreatment of a person's medical condition.

Toxicity can affect multiple organ systems and include peripheral neuropathies, seizures, phototoxicity, tendon rupture, fatal drug interactions and arthropathies in children. Fluoroquinolones should not be taken by pregnant and lactating women due to concern over the potential effect on a developing fetus.

The sale in Louisiana of seafood adulterated with Fluoroquinolones will expose Louisiana's citizens, including unborn children and nursing infants, to Fluoroquinolones and to the potential risks cited above, thereby presenting an imminent peril to the public's health, safety and welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that this Emergency Rule is necessary to include China as geographic area to which the provisions of Title 7 Part XXXV.511 of the Louisiana Administrative Code apply.

This Rule becomes effective upon signature, May 4, 2007, and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

## Title 7

### AGRICULTURE AND ANIMALS

#### Part XXXV. Agro-Consumer Services

#### Chapter 5. Consumer Products—Testing and Labeling

##### Subchapter B. Fluoroquinolones

#### §511. Fluoroquinolones in Seafood Prohibited; Testing and Sale of

A. - K. ...

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

1. The geographic area or areas are:
  - a. the country of Vietnam;
  - b. the country of China.

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

M. - N. ...

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

HISTORICAL NOTE: Promulgated by the Louisiana Department of Agriculture and Forestry, Office of Agro-Consumer Services, Weights and Measures Division, LR 33:38 (January 2007), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 33:

Bob Odom  
Commissioner

0705#024

**DECLARATION OF EMERGENCY**

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

**Scholarship/Grant Programs—Eligibility  
(LAC 28:IV:505, 507 and 703)**

Editor's Note: This Emergency Rule is being printed according to R.S. 49:954.1(C) which directs the Office of the State Register to publish documents submitted by a rulemaking agency without regard to validity. This Emergency Rule was not submitted in accordance with R.S. 49:950 et seq.

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Scholarship/Grant programs (R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)).

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. LASFAC has 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 April 12, 2007, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG0785E)

**Title 28  
EDUCATION**

**Part IV. Student Financial Assistance—Higher  
Education Scholarship and Grant Programs**

**Chapter 5. Applications, Federal Grant Aid and ACT  
Test**

**§505. Application Deadlines for High School  
Graduates and Home Study Completers of 2004  
and Later and Eligible Non-Graduates**

A.1. - C.3.w. ...

x. A student, who enrolls for the first time as a full time student at an accredited out-of-state college and subsequently returns to Louisiana and enrolls as a full-time student in an eligible college or university for the fall semester of 2006, will be eligible for his TOPS award beginning with the fall semester of 2006 if his initial FAFSA or the on-line application is received no later than July 1, 2007.

C.4. - 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 22:338 (May 1996), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), repromulgated LR 27:1847 (November 2001), amended LR 30:2017 (September 2004), LR 31:37 (January 2005), LR 32:2238 (December 2006), LR 33:83 (January 2007), LR 33:

**§507. Final Deadline for Submitting Documentation of  
Eligibility**

A. - B.1. ...

2. Beginning with the 2005-2006 academic year (college), all documentation and certifications necessary to establish student initial eligibility including, but not limited to, high school and/or college transcripts and certifications, copies of student aid reports, applicant confirmation forms, promissory notes, ACT and/or SAT scores, residency affidavits, proof of citizenship or permanent residency status and other documents that may be utilized in determining eligibility, must be received by LASFAC no later than July 1 immediately following the academic year (college) the student is first eligible for payment of a TOPS award. For example, if a student's initial FAFSA is received no later than July 1, 2007, for that student to receive an award for the 2007-2008 academic year (college), LASFAC must have in its possession all documents relevant to establishing eligibility by July 1, 2008.

C.1. - D.3. ...

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 22:338 (May 1996), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), repromulgated LR 27:1847 (November 2001), amended LR 28:447 (March 2002), LR 30:1161 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 32:2238 (December 2006), LR 33:

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

**§703. Establishing Eligibility**

A. - A.5.a.i.(b). ...

(c) for students graduating in academic year (high school) 2004-2005 through 2005-2006, at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work documented on the student's official transcript as approved by the Louisiana Department of Education constituting a core curriculum as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
1	Geometry, Trigonometry*, Calculus or comparable Advanced Mathematics *Trigonometry cannot be used to fulfill this requirement for students graduating in Academic Year (High School) 2005-2006 and thereafter
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical 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 (1 unit combined) or Civics (1 unit, nonpublic)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language

Units	Course
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE); or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum); BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

(d). for students graduating in academic year (high school) 2006-2007, at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work documented on the student's official transcript as approved by the Louisiana Department of Education constituting a core curriculum as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
1	Geometry, Trigonometry*, Calculus or comparable Advanced Mathematics *Trigonometry cannot be used to fulfill this requirement for students graduating in Academic Year (High School) 2005-2006 and thereafter
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical 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 (1 unit combined) or Civics (1 unit, nonpublic)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language

Units	Course
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE); or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum); BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Database Design and Programming (1/2 or 1 credit) Database Programming with PL/SQL (1/2 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Digital Media I (1/2 or 1 credit) Digital Media II (1/2 or 1 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Java Programming (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

(e). beginning with the graduates of academic year (high school) 2007-2008, at the time of high school graduation, an applicant must have successfully completed 17.5 units of high school course work that constitutes a core curriculum and is documented on the student's official transcript as approved by the Louisiana Department of Education as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
1	Geometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit; provided however, that such Agriscience unit shall not be considered a science elective for the purpose of the math or science elective requirement below)
1	An elective from among the following math subjects: Geometry, Calculus, Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III, Advanced Mathematics I, Advanced Mathematics II, Integrated Mathematics III or the following science subjects: Biology II, Chemistry II, Physics or Physics II

Units	Course
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit, nonpublic)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or 1 elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE) or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum). BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Database Design and Programming (1/2 or 1 credit) Database Programming with PL/SQL (1/2 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Digital Media I (1/2 or 1 credit) Digital Media II (1/2 or 1 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Java Programming (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

A.5.a.ii. - J.3.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, 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 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 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), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR

31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:

George Badge Eldredge  
General Counsel

0705#052

## DECLARATION OF EMERGENCY

### Tuition Trust Authority Office of Student Financial Assistance

#### START Savings Program—2006 Interest Rates (LAC 28:VI.315)

Editor's Note: This Emergency Rule is being printed according to R.S. 49:954.1(C) which directs the Office of the State Register to publish documents submitted by a rulemaking agency without regard to validity. This Emergency Rule was not submitted in accordance with R.S. 49:950 et seq.

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

This Emergency Rule is necessary to allow the Louisiana Office of Student Financial Assistance and 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. LATTA has 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 on April 12, 2007, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (ST0784E)

#### Title 28

#### EDUCATION

#### Part VI. Student Financial Assistance—Higher Education Savings—Tuition Trust Authority

#### Chapter 3. Education Savings Account

#### §315. Miscellaneous Provisions

A.1.a - B.14. ...

15. For the year ending December 31, 2006, the Louisiana Education Tuition and Savings Fund earned an interest rate of 5.11 percent.

16. For the year ending December 31, 2006, the Earnings Enhancements Fund earned an interest rate of 4.67 percent.

C. - S.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 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038

(October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:

George Badge Eldredge  
General Counsel

0705#054

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

Expedited Permit Processing Program  
(LAC 33:I.Chapter 18)(OS073E3)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement the expedited permit processing program.

This is a renewal of Emergency Rule OS073E2, which was effective on January 9, 2007, and published in the *Louisiana Register* on January 20, 2007.

This Emergency Rule provides a program for expedited permit processing and implementation of the associated expedited permit processing fees authorized by Acts 586 and 779 of the 2006 Regular Legislative Session. These Acts allow for expedited processing of a permit at no additional cost to the department for overtime pay. This Emergency Rule will allow the department to conduct a pilot program to gather the information needed to develop a final rule. Specifically, the department will be able to evaluate the environmental and public health benefits and the social and economic costs of expedited permit processing and the associated fees. Moreover, rapid implementation of Acts 586 and 779 will allow the expedited permit processing program to begin immediately, enhancing economic growth. Many companies consider environmental permitting timelines in determining where to locate a proposed facility. Expedited permit processing allows companies to act more quickly in response to market demands and conditions. The department has proposed a Rule to promulgate these regulations.

This Emergency Rule is effective on May 9, 2007, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning OS073E3 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx), and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110

Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

## Title 33

### ENVIRONMENTAL QUALITY

#### Part I. Office of the Secretary

#### Subpart 1. Departmental Administrative Procedures Chapter 18. Expedited Permit Processing Program §1801. Scope

A. This Chapter establishes a program to expedite the processing of permits, modifications, licenses, registrations, or variances for environmental permit applicants who may request such services. Expedited processing of a permit, modification, license, registration, or variance is an exercise of the discretion of the administrative authority and is subject to the availability of resources needed in order to process the permit, modification, license, registration, or variance.

#### B. Eligibility

1. An application for an initial permit or permit modification necessary for new construction as required by the Environmental Quality Act or regulation is eligible for expedited permit processing.

2. An application for permit renewal and/or reconciliation is not eligible for expedited processing pursuant to the provisions of this Chapter unless it is associated with new construction; results in new permanent jobs; includes increases in production which benefit the national, state, or local economy; or provides a direct benefit to the environment.

3. The applicant's failure to pay any outstanding fees owed to the department may be considered grounds for denial of a request for expedited permit processing.

C. To the extent practicable, requests proposing new construction or requests that will result in the creation of new permanent jobs will be given highest consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

#### §1803. Procedures

A. Requests for expedited permit processing shall be submitted using the approved form. The approved form is available on the official website for the department. Hard copies may be obtained from the Office of Environmental Services, Environmental Assistance Division, Box 4313, Baton Rouge, LA 70821-4313.

B. Within 10 working days after receipt of a request for expedited processing of any permit, modification, license, registration, or variance, the administrative authority shall issue a decision to grant or deny the expedited processing request.

#### C. Requests for Additional Information

1. If at any time during the review process of an application the administrative authority determines that additional information is necessary, the administrative authority shall notify the applicant and require a response from the applicant within a reasonable, specified time.

2. The applicant shall respond to the request for additional information within the time specified by the administrative authority. Such a response shall contain all information required by the administrative authority.



3. The administrative authority reserves the right to cease expedited processing of the permit, modification, license, registration, or variance in accordance with the provisions of this Chapter if the applicant fails to supply the requested additional information by the specified time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

#### **§1805. Fees**

A. In addition to the fees charged pursuant to R.S. 30:2014, a fee shall be charged for each permit, modification, license, registration, or variance that is processed on an expedited basis in accordance with the provisions of this Chapter.

1. An appropriate fee shall be computed based on the maximum per hour overtime salary, including associated related benefits, of the civil service employee of the department who performs the work.

2. The fee shall be computed by multiplying the salary figure from Paragraph A.1 of this Section by every overtime hour or portion thereof that a department employee or contractor works on expedited processing of the permit, modification, license, registration, or variance.

3. The applicant may request that the expedited permit processing fee not exceed a maximum amount. If such a maximum amount is established, the number of overtime hours a department employee or contractor works processing the permit, modification, license, registration, or variance shall be limited accordingly. If further processing of the application is required, the department's continued review will not follow the provisions of this Chapter, and the request will no longer be handled on an expedited basis.

B. In the event that the administrative authority ceases processing a permit, modification, license, registration, or variance in accordance with LAC 33:I.1803.C.3 or Paragraph A.3 of this Section, a fee will be charged for every overtime hour or portion thereof that a department employee or contractor worked on expedited processing of the subject permit, modification, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

#### **§1807. Invoicing and Failure to Pay**

A. An invoice for the expedited permit processing fee shall be transmitted to the applicant after the administrative authority has made a decision to grant or deny the permit, modification, license, registration, or variance.

B. Failure to pay the expedited permit processing fee by the due date specified on the invoice will constitute a violation of these regulations and shall subject the applicant to relevant enforcement action under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the permit, modification, license, registration, or variance.

C. A permit appeal, whether by the applicant or a third party, shall not stay the requirement to pay the expedited permit processing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

#### **§1809. Public Notice and Availability of Records**

A. Requirement to Provide Public Notice. The department shall provide notice of each permit, modification, license, registration, or variance that is processed pursuant to the provisions of this Chapter.

1. The notice of expedited permit processing shall be provided on the official website for the department.

2. For draft or proposed permit actions subject to public notice requirements under other regulations or program requirements, such public notice shall indicate that the draft or proposed permit was processed under the expedited permit processing provisions of this Chapter.

B. Contents of the Notice. The notice shall contain the name of the applicant/permittee, the agency interest number, the parish in which the facility is physically located, the environmental media involved, the date the request for expedited processing was received, and the date of the decision to approve or deny the request for expedited processing.

C. Availability of Records. All recorded information (completed permit application form, fact sheet or statement of basis, draft and proposed permits, or any public document) not classified as confidential information under R.S. 30:2030(A) or 30:2074(D) and designated as such in accordance with applicable regulations shall be made available to the public for inspection and copying in accordance with the Public Records Act, R.S. 44:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

Mike D. McDaniel, Ph.D.  
Secretary

0705#038

#### **DECLARATION OF EMERGENCY**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

Sewage Sludge Regulatory Management  
(LAC 33:VII.301 and IX.107,  
6901-6913, and 7135)(OS066E6)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to prevent the unauthorized disposal of sewage sludge in treatment works treating domestic sewage and other areas unprepared to receive the waste stream.

This is a renewal of Emergency Rule OS066E5, which was effective on January 27, 2007, and published in the *Louisiana Register* on February 20, 2007. The department is drafting a rule to promulgate these regulations. This Emergency Rule revises the regulations to:

1. improve clarity and consistency;
2. clarify compliance dates for surface disposal and sanitary wastewater treatment facilities receiving domestic septage and/or portable toilet waste into their systems;
3. establish closure requirements for sanitary wastewater treatment facilities and sewage sludge disposal ponds/lagoons;
4. establish standards for the transporter of sewage sludge and the vehicle used to transport the sewage sludge (previously under the jurisdiction of the Office of Public Health); and
5. establish standard conditions for all sewage sludge (biosolids) use or disposal permits.

Prior to the Emergency Rule issued September 1, 2005, sewage sludge was managed by three different programs within the state and the EPA. The multiple permitting process was a cumbersome and expensive process for both the state and the regulated community. This permitting process has resulted in inadequately permitted and/or designed facilities to accept the waste. The potential for dumping of sewage sludge presents a potential health risk to the public and the environment in areas of the state that are under-developed for receiving the waste. This Emergency Rule attempts to streamline and expedite the permitting process by removing the solid waste requirements for the management of sewage sludge from the solid waste regulations (LAC 33, Part VII). Sewage sludge will be managed by LAC 33:IX.Chapter 69 that is reflective of and equivalent to the Clean Water Act Section 503 program at the federal level.

This Emergency Rule is effective on May 27, 2007, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning OS066E6 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx) under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

#### **Title 33**

### **ENVIRONMENTAL QUALITY**

#### **Part VII. Solid Waste**

##### **Subpart 1. Solid Waste Regulations**

#### **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:

- A. - A.8. ...

9. sewage sludge (including domestic septage) that is generated, treated, processed, composted, blended, mixed, prepared, transported, used, or disposed in accordance with LAC 33:IX.Chapter 69. Provisions addressing sewage sludge and domestic septage found throughout these regulations will no longer apply.

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 26:2515 (November 2000), LR 28:780 (April 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 33:

#### **Part IX. Water Quality**

##### **Subpart 1. Water Pollution Control**

#### **Chapter 1. General Provisions**

##### **§107. Definitions**

\* \* \*

*Sewage Sludge*—any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. *Sewage sludge* includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. *Sewage sludge* does not include grit or screenings, or ash generated during the incineration of sewage sludge.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074 (B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2538 (November 2000), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

##### **Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program**

#### **Chapter 69. Standards for the Use or Disposal of Sewage Sludge**

##### **§6901. General Provisions**

###### **A. Purpose and Applicability**

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

a. This Chapter 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 Chapter for sewage sludge and domestic septage (hereafter referred to collectively as *sewage sludge* for the purposes of this Chapter) and a material derived from sewage sludge that is applied to the land and sewage sludge fired in a sewage sludge incinerator. Also included in this Chapter are pathogen and alternative vector attraction reduction requirements for sewage sludge and a material derived from sewage sludge applied to the land; the siting, operation, and financial assurance requirements for commercial preparers or land applicators of sewage sludge and a material derived from sewage sludge; and the standards for

transporters of sewage sludge and for vehicles of transporters of sewage sludge.

b. The standards in this Chapter include the frequency of monitoring, recordkeeping requirements, and reporting requirements for Class I sludge management facilities as defined in Subsection I of this Section.

c. This Chapter establishes requirements for the person who prepares sewage sludge or sewage sludge mixed with grease that is pumped or removed from a food service facility, including dewatering and solidification, that is disposed in a Municipal Solid Waste Landfill.

d. ...

## 2. Applicability

a. This Chapter applies to:

i. any person who prepares sewage sludge or a material derived from sewage sludge, including the dewatering and solidification of sewage sludge;

ii. any person who applies sewage sludge or a material derived from sewage sludge to the land;

iii. any person who prepares sewage sludge, including dewatering and solidification, that is disposed in a Municipal Solid Waste Landfill;

iv. the owner/operator of a surface disposal site;

v. the owner/operator of a sewage sludge incinerator; and

vi. the transporter of sewage sludge and the vehicle used to transport the sewage sludge.

b. This Chapter applies to sewage sludge or a material derived from sewage sludge that is applied to the land or placed on a surface disposal site, to the land where the sewage sludge and a material derived from sewage sludge is applied, and to a surface disposal site.

c. ...

d. This Chapter applies to the sewage sludge that is disposed in a Municipal Solid Waste Landfill.

## B. Compliance Period

1. - 3.a. ...

b. Compliance with the requirements in Paragraphs F.2, 3, and 4 of this Section shall be achieved as follows.

i. A facility presently meeting all of the requirements for surface disposal in 40 CFR 503, Subpart C, must comply with the requirements in Paragraph F.2 of this Section as expeditiously as practicable, but in no case later than September 1, 2007.

ii. A facility that does not meet all of the requirements for surface disposal in 40 CFR 503, Subpart C, must comply with the requirements in Paragraph F.2 of this Section on December 30, 2005.

iii. All facilities must comply with the requirements in Paragraphs F.3 and 4 of this Section as expeditiously as practicable, but in no case later than September 1, 2007.

## 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 or a material derived from sewage sludge to the land, or own or operate a sewage sludge incinerator without first obtaining a permit in accordance with the deadlines set forth in Subparagraphs C.1.b-d of this Section.

b. As of December 30, 2005, those persons who have been:

i. granted an exemption under LAC 33:Part 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;

ii. issued a standard solid waste permit under LAC 33:Part VII for the use, disposal, treatment, or processing of sewage sludge, with the exception of a standard solid waste permit issued for a type of *surface disposal* as defined in Subsection I of this Section, may continue operations under the standard solid waste permit until such time as a permit has been reissued under these regulations by the administrative authority or for a period not to exceed five years, whichever is less. This time period may be reduced by the administrative authority if deemed necessary for the protection of human health and/or the environment;

iii. issued a standard solid waste permit for a type of *surface disposal* as defined in Subsection I of this Section shall comply with the requirements in Subparagraph B.3.b of this Section.

c. As of June 1, 2006, all other facilities not addressed under Subparagraph C.1.b of this Section shall apply for a permit as follows.

i. All sanitary wastewater treatment facilities that receive domestic septage and/or portable toilet waste into their systems shall apply for a permit within 180 days after June 1, 2006.

ii. All treatment facilities that are for the sole purpose of preparing sewage sludge or sewage sludge mixed with grease that is pumped or removed from a food service facility shall apply for a permit within 180 days after June 1, 2006.

iii. All treatment facilities that prepare sewage sludge for the use of land application and all land appliers of biosolids who are not presently operating under an effective standard solid waste permit shall apply for a permit within 180 days after June 1, 2006.

iv. All major sanitary wastewater treatment facilities that do not receive domestic septage and/or portable toilet waste into their systems shall apply for a permit as expeditiously as practicable, but in no case later than three years from June 1, 2006.

v. All minor sanitary wastewater treatment facilities that do not receive domestic septage and/or portable toilet waste into their systems shall apply for a permit as expeditiously as practicable, but in no case later than five years from June 1, 2006.

d. At least 180 days prior to expiration of the permit described in Clause C.1.b.ii of this Section, the owner/operator of the facility shall submit an application for permit issuance under this Chapter if the owner/operator intends to continue operations after that date.

e. The person who prepares or land-applies sewage sludge or a material derived from sewage sludge shall use the Sewage Sludge (Biosolids) Use or Disposal Permit Application form. The owner/operator of a sewage sludge incinerator shall apply for a permit in accordance with LAC 33:III.Chapter 5 and shall utilize both the Air Quality Permit Application and the Sewage Sludge (Biosolids) Use or Disposal Permit Application forms. The forms can be accessed through the department's website or by contacting

the Office of Environmental Services, Water Permits Division.

f. Except as allowed in Subparagraph C.1.b of this Section, all permits issued in accordance with these regulations shall be effective for a period not to exceed five years. The standard five-year permit period may be reduced to a period of less than five years if deemed necessary by the administrative authority for the protection of human health and/or the environment.

2. 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 I of this Section.

a. 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 that possesses an Exceptional Quality Permit under LAC 33:IX.6903.J.

b. The administrative authority may exempt any other person who applies sewage sludge or a material derived from sewage sludge 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 or a material derived from sewage sludge to the land.

3. The person who prepares sewage sludge, the person who applies sewage sludge to the land, the commercial preparer or land applier of sewage sludge, and the owner and/or operator of a sewage sludge incinerator who desires to maintain a permit shall obtain adequate training and certification in the processing, treatment, land application, and incineration of sewage sludge.

a. To maintain certification, eight units of continuous education shall be obtained on an annual basis.

b. Classes, seminars, conferences, or conventions used for units must be approved by the administrative authority.

4. Sanitary Wastewater Treatment Facilities and Sewage Sludge Disposal Ponds/Lagoons Closure Requirements

a. The use or disposal options for the closure of a facility that was utilized for the treatment of sanitary wastewater or the disposal of sewage sludge shall consist of:

i. removal and disposal in a permitted municipal solid waste landfill;

ii. obtaining Exceptional Quality Biosolids certification without further soil or site restrictions; or

iii. approval for land application as a Non-exceptional Quality Biosolids with soil or site restrictions.

b. In closing a facility that was utilized for sanitary wastewater treatment, the liquid portion must be removed in a manner that meets the requirements of LAC 33:IX.Subpart 2.

c. A closure plan for removal and disposal of the sewage sludge in a permitted solid waste landfill shall be submitted prior to site closure to the Office of Environmental Services, Water Permits Division, including but not limited to, the following information:

i. the name, mailing address, physical address, and contact person of the facility that is proposed for closure;

ii. an aerial photograph showing the location of the facility that is proposed for closure;

iii. the amount of sewage sludge that will be removed and disposed at a permitted landfill;

iv. a sampling and analysis plan for the sewage sludge. The sampling and analysis plan shall include:

(a) either a schematic drawing or aerial photograph that indicates where the samples will be taken;

(b) the lab methods utilized;

(c) the name of the laboratory where the samples will be analyzed; and

(d) any other information the department may require; and

v. the name, location, and contact person at the site where the sewage sludge will be disposed.

d. Approval or disapproval of the closure plan required in Subparagraph C.4.c of this Section shall be granted by the administrative authority after receipt and review of the plan.

e. A request for an Exceptional Quality Biosolids certification without further soil or site restrictions shall be submitted to the Office of Environmental Services, Water Permits Division, including but not limited to, the following information.

i. A sampling and analysis plan shall be submitted to the administrative authority in accordance with Subsection H of this Section. The sewage sludge shall be sampled and analyzed in a laboratory that is certified by the state of Louisiana. The minimum sampling and analysis requirements are as follows:

(a) toxicity characteristic leaching procedure (TCLP)—one composite sample;

(b) pollutants listed in Table 1 of LAC 33:IX.6903.D—at least four separate, random, representative samples of pollutants listed in the table;

(c) fecal coliform or *Salmonella sp.*—for each pollutant a minimum of four separate, random, representative samples. Report the geometric mean of the separate samples collected and analyzed. The samples must be analyzed by using Part 9221-E of "Standard Methods for the Examination of Water & Wastewater" for fecal coliform and Part 9260 of "Standard Methods for the Examination of Water & Wastewater" for *Salmonella sp.*;

(d) vector attraction reduction—for each pollutant a minimum of four separate, random, representative samples. If specific sampling and analysis methods are listed in Subsection H of this Section for vector attraction reduction, then the methods listed must be used for the determination of vector attraction reduction;

(e) PCB—one composite sample; and

(f) total nitrogen, nitrates, total phosphorus, total potassium, and pH—one composite sample from four or more separate samples collected from the treatment facility or from each cell of an oxidation pond, lagoon, or surface impoundment.

ii. Results of the analyzed samples, along with QA/QC documentation, must be submitted to the administrative authority, along with the following additional information:

(a). the name of the facility that utilized the treatment facility;

(b). the LPDES (sanitary wastewater discharge) Permit Number for the treatment facility;

(c). the design capacity of the treatment facility. If the facility was an oxidation pond, include the size of the pond (in acres) and the number of cells of the pond (1-cell, 2-cell, or 3-cell);

(d). the approximate tons of sewage sludge to be disposed;

(e). the location of the facility delineated on an aerial photograph;

(f). the future plans for the site where the treatment plant is located;

(g). the demographics within the area of the facility (businesses, hospitals, nursing homes, day-care centers, schools, walk-in clinics, etc.);

(h). potable water wells within a 1-mile radius of the facility (locate on an aerial photograph; include private and public potable water wells);

(i). the name of the drinking water aquifer.

f. After receipt and review of the results of the laboratory analyses and the additional information required in Clause C.4.e.ii of this Section, a decision shall be rendered by the administrative authority regarding Exceptional Quality Biosolids certification.

g. If closure is through land application of the sewage sludge as Non-exceptional Quality Biosolids, an official application for a Sewage Sludge (Biosolids) Use or Disposal Permit must be submitted to the Office of Environmental Services, Water Permits Division, utilizing the application form that can be accessed on the department's website or by contacting the Office of Environmental Services, Water Permits Division.

5. Environmental Impact Supplementary Information. In addition to the requirements of this Chapter, all sewage sludge use or disposal permit applications must include a response to each of the following:

a. a detailed discussion demonstrating that the potential and real adverse environmental effects of the proposed facility have been avoided to the maximum extent possible;

b. a cost benefit analysis that balances the environmental impact costs against the social and economic benefits of the facility and demonstrates that the latter outweigh the former;

c. a discussion and description of possible alternative projects that would offer more protection to the environment than the proposed facility without unduly curtailing non-environmental benefits;

d. a detailed discussion of possible alternative sites that would offer more protection to the environment than the proposed facility site without unduly curtailing non-environmental benefits; and

e. a discussion and description of mitigating measures that would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits.

D. Sewage Sludge Disposed in a Municipal Solid Waste Landfill

1. - 2. ...

3. The person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill shall provide the following to the Office of Environmental Services, Water Permits Division:

a. proof that the sewage sludge is being disposed at an approved landfill by furnishing the name, address, and permit number of the landfill; and

b. copies of all records of sampling and laboratory analyses of the sewage sludge that are required by the owner/operator of the landfill.

E. Registration Requirements and Standards for Vehicles and Transporters of Sewage Sludge

1. Transporters of sewage sludge shall only transport the sewage sludge and/or grease mixed with sewage sludge to a permitted facility and shall maintain the following records.

a. The transporter shall maintain a daily log or record of activities.

b. The daily log or record shall contain the following information regarding the sewage sludge and/or grease mixed with sewage sludge:

i. the date obtained, pumped, or removed;

ii. the origin or source;

iii. the volume generated at each site;

iv. the transfer or disposal site; and

v. the total amount that was transported or disposed.

2. A transporter of sewage sludge shall obtain a transporter registration number from the Office of Environmental Services, Water Permits Division, prior to engaging in transportation activities, utilizing a form that is obtained from the Office of Environmental Services, Water Permits Division, or the department's website.

3. The types and sizes of vehicles shall comply with the regulations and licensing of the Department of Transportation and Development and with applicable local ordinances governing weight and size for the roads and streets that must be traveled during the transporting of sewage sludge.

4. The bodies of vehicles must be covered at all times, except during loading and unloading, in a manner that prevents rain from reaching the sewage sludge, inhibits access by vectors, prevents the sewage sludge from falling or blowing from the vehicle, minimizes escape of odors, and does not create a nuisance.

5. The bodies of vehicles that are utilized to transport liquefied sewage sludge or a sewage sludge that is capable of producing a leachate shall be constructed and/or enclosed with an appropriate material that will completely prevent the leakage or spillage of the liquid.

6. The vehicle washdown area shall be designed, constructed, and operated to prevent leakage that may lead to groundwater contamination or uncontrolled contaminated surface runoff.

7. Water collected in the vehicle washdown area shall be discharged and the containment system thoroughly cleaned as often as is needed to minimize odors. The leachate and the cleanout water shall be discharged in accordance with all applicable state and federal regulations.

F. Prohibitions, Restrictions, and Additional or More Stringent Requirements

1. No person shall use or dispose of sewage sludge or a material derived from sewage sludge through any practice for which requirements have not been established in this Chapter.

2. *Surface disposal*, as defined in Subsection I of this Section, is prohibited as a use or disposal method of sewage sludge or of a material derived from sewage sludge.

3.a. *Storage of sewage sludge*, as defined in Subsection I 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 I of this Section;

ii. notification has been made by the person who wishes to store the sewage sludge to the administrative authority; and

iii. subsequent approval by the administrative authority has been received.

b.i. The administrative authority may approve the storage of sewage sludge for commercial preparers or land applicers of sewage sludge or for purposes other than those listed in Subparagraph F.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 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 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 administrative authority will issue a notice of deficiency. The commercial preparer or land applicer 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 administrative authority will then

make and issue a determination to grant or deny the request for the storage of sewage sludge.

4. The use of ponds or lagoons is allowed for the *treatment of sewage sludge*, as defined in Subsection I of this Section, only after a permit has been granted under these regulations and the applicable air and water discharge permits have been applied for and granted by the administrative authority.

a. The person who makes use of a pond or lagoon to treat or for treatment of sewage sludge shall provide documentation to the Office of Environmental Services, Water Permits Division, that indicates the final use or disposal method for the sewage sludge and shall apply for the appropriate permit for the chosen final use or disposal in accordance with this Chapter.

b. The person who makes use of a pond or lagoon to treat or for treatment of sewage sludge shall provide documentation by a qualified groundwater scientist to the Office of Environmental Services, Water Permits Division, that indicates that the area where the pond or lagoon is located will adequately protect against potential groundwater contamination either by natural soil conditions or by a constructed soil or synthetic liner that has a hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second or less, and protect from the potential to *contaminate an aquifer* as defined in Subsection I of this Section.

5. Materials Prohibited from Feedstock or Supplements That Are Blended, Composted, or Mixed with Sewage Sludge

a.i. The person who generates, transports, or treats sewage sludge shall not blend, compost, or mix hazardous waste with sewage sludge.

ii. 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.6901.F is prohibited.

b. The 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.

c. Material utilized as feedstock or supplements and blended, composted, or mixed with sewage sludge must be sampled and analyzed on an annual basis to determine if the material is nonhazardous by a hazardous waste determination in accordance with 40 CFR 261 and/or LAC 33:Part V.

d. Results of the sampling and analysis required in Subparagraph F.5.c of this Section must be submitted to the administrative authority on an annual basis.

<b>Table 1 of LAC 33:IX.6901.F</b>
<b>Materials Prohibited from Feedstock or Supplements That Are Blended, Composted, or Mixed with Sewage Sludge</b>
Antifreeze
Automotive (lead-acid) batteries
Brake fluid
Cleaners (drain, oven, toilet)
Gasoline and gasoline cans
Herbicides
Household (dry cell) batteries
Oil-based paint

<b>Table 1 of LAC 33:IX.6901.F</b>
<b>Materials Prohibited from Feedstock or Supplements That Are Blended, Composted, or Mixed with Sewage Sludge</b>
Pesticides
Photographic supplies
Propane cylinders
Treated wood containing the preservatives CCA and/or PCP
Tubes and buckets of adhesives, caulking, etc.
Swimming pool chemicals
Unmarked containers
Used motor oil

6.a. Sewage sludge composting operations shall not be located on airport property unless an exemption or approval is granted by the U.S. Department of Transportation's Federal Aviation Administration.

b. If an exemption or approval is granted by the U.S. Department of Transportation's Federal Aviation Administration to allow a sewage sludge composting operation to be located on airport property, the location restrictions at LAC 33:IX.6905.A.1.f and g for off-airport property operations shall apply.

7.a. The use of raw or untreated sewage sludge as daily, interim, or final cover at a Municipal Solid Waste Landfill is prohibited.

b. The use of sewage sludge as daily, interim, or final cover at a Municipal Solid Waste Landfill is allowed only if the sewage sludge meets the requirements and is used in accordance with the requirements in LAC 33:IX.Chapter 69.

8. Sewage sludge mixed with grease shall be disposed in a permitted landfill and shall not be introduced into any part of a treatment works, including its collection system, or applied to the land.

9. On a case-by-case basis, the permitting authority may impose requirements in addition to or more stringent than the requirements in this Chapter when necessary to protect human health and the environment from any adverse effect of a pollutant in the sewage sludge.

#### G. Exclusions

##### 1. Co-Firing of Sewage Sludge

a. Except for the co-firing of sewage sludge with *auxiliary fuel*, as defined in LAC 33:IX.6911.B, this Chapter 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 Chapter 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.

2. Sludge Generated at an Industrial Facility. This Chapter 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.

3. Hazardous Sewage Sludge. This Chapter 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:Part V.

4. Sewage Sludge with High PCB Concentration. This Chapter 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).

5. Incinerator Ash. This Chapter does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

6. Grit and Screenings. This Chapter 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.

7. Drinking Water Treatment Sludge. This Chapter 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.

#### H. Sampling and Analysis

##### 1. Sampling

a. The permittee shall collect and analyze representative samples of sewage sludge or a material derived from sewage sludge 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 Chapter. 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, Water Permits Division. Methods in the materials listed below shall be used to analyze samples of sewage sludge.

a. Enteric Viruses. ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," 1992 Annual Book of ASTM Standards: Section 11—Water and Environmental Technology, ASTM, 1916 Race Street, Philadelphia, PA 19103-1187.

b. Fecal Coliform. Part 9221 E or Part 9222 D, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

c. Helminth Ova. Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB 88-154273/AS).

d. Inorganic Pollutants. *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, Second Edition (1982) with Updates I (April 1984) and II (April 1985) and Third Edition (November 1986) with Revision I (December 1987). Second Edition and Updates I and II are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB-87-120-291). Third Edition and Revision I are available from Superintendent of Documents, Government Printing Office, 941 North Capitol Street, NE, Washington, DC 20002 (Document Number 955-001-00000-1).

e. *Salmonella sp.* Bacteria. Part 9260 D, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005; or Kenner, B.A. and H.P. Clark, "Detection and Enumeration of *Salmonella* and *Pseudomonas Aeruginosa*," *Journal of the Water Pollution Control Federation*, Vol. 46, No. 9, September 1974, pp. 2163-2171. Water Environment Federation, 601 Wythe Street, Alexandria, VA 22314.

f. Specific Oxygen Uptake Rate. Part 2710 B, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

g. Total, Fixed, and Volatile Solids. Part 2540 G, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

h. Incineration of Sewage Sludge—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>.

k. Nutrients—*Methods of Soil Analysis*, Soil Science Society of America Series (Most Recent Editions).

I. General Definitions. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

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

*Air Operations Area*—any area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft. An *air operations area* includes paved areas or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft, in addition to those areas' associated runways, taxiways, or aprons.

*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 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 Chapter:

a. any *publicly owned treatment works (POTW)* or *privately owned sanitary wastewater treatment facility (POSWTF)*, as defined in this Subsection, 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 preparers of sewage sludge;

c. the owner/operator of a sewage sludge incinerator; and

d. the person who applies sewage sludge or a material derived from sewage sludge to the land (includes commercial land applicers of sewage sludge).

*Commercial Preparer or Land Applier of Sewage Sludge*—any person who prepares or land-applies 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.

*Contaminate an Aquifer*—to introduce a substance that causes the maximum contaminant level for nitrate in 40 CFR 141.62(b) to be exceeded in the groundwater, or that causes the existing concentration of nitrate in groundwater to increase when existing concentration exceeds the maximum contaminant level for nitrate in 40 CFR 141.62(b).

*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.6903.D, the pollutant concentrations in Table 3 of LAC 33:IX.6903.D, the pathogen requirements in LAC 33:IX.6909.C.1, one of the vector attraction reduction requirements in LAC 33:IX.6909.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.

*Food Service Facility*—any facility that prepares and/or packages food or beverages for sale or consumption, on- or off-site, with the exception of private residences. *Food service facilities* include, but are not limited to, food courts, food manufacturers, food packagers, restaurants, grocery stores, bakeries, lounges, hospitals, hotels, nursing homes, churches, and schools.

*Grease*—a material, either liquid or solid, composed primarily of fat, oil, or grease from animal or vegetable sources. The terms *fats, oils, and grease; oil and grease; and oil and grease substances* shall all be included within this definition.

*Groundwater*—water below the land surface in the saturated zone.

*Industrial Park*—an area that is legally zoned for the purpose of the construction and operation of a group of industries and businesses and entered as legally zoned for such purpose in the public records of the state, parish, city, town, or community where the park is located.

*Industrial Wastewater*—wastewater generated in a commercial or industrial process.

*Land Application*—the beneficial use of sewage sludge or a material derived from sewage sludge 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 1 metric ton or less.

*Permitting Authority*—either EPA or a state with an EPA-approved sludge management program.

*Person Who Prepares Sewage Sludge*—the person who generates sewage sludge during the treatment of domestic sewage in a treatment works, the person who treats sewage sludge, 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).

*Private Land Applier*—a person who land-applies sewage sludge or a material derived from sewage sludge for private benefit purposes, where the land application is not for monetary profit or other financial consideration and either the person did not generate or prepare the sewage sludge or a material derived from sewage sludge, or the facility or facilities from which the sewage sludge or a material derived from sewage sludge was obtained are not owned by or associated with the private land applier.

*Privately Owned Sanitary Wastewater Treatment Facility (POSWTF)*—a privately owned treatment works that is utilized to treat sanitary wastewater and is not a *publicly owned treatment works (POTW)*, as defined in this Subsection.

*Publicly Owned Treatment Works (POTW)*—a treatment works, as defined by Section 212 of the Clean Water Act, that is owned by a *state* or *municipality* as defined by Section 504(2) of the Clean Water Act. This includes all devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW; and the municipality, as defined by Section 502(4) of the Clean Water Act, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

*Qualified Groundwater Scientist*—an individual with a baccalaureate or post-graduate degree in the natural sciences or engineering who has sufficient training and experience in groundwater hydrology, subsurface geology, and/or related fields, as may be demonstrated by state registration, professional certification, or completion of accredited university programs, to make sound professional judgments regarding groundwater monitoring, pollutant fate and transport, and corrective action.

*Runoff*—rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

*Sewage Sludge*—any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. *Sewage sludge* includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. *Sewage sludge* does not include grit or screenings, or ash generated during the incineration of sewage sludge.

*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 Chapter, 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*—the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, blending, mixing, composting, thickening, stabilization, and dewatering and solidification of sewage sludge. This does not include storage of sewage sludge.

*Transporter of Sewage Sludge*—any person who moves sewage sludge off-site or moves sewage sludge to a storage site, treatment or processing site, disposal site, or land application site.

*Treatment Works*—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), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:

### §6903. 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 or a material derived from sewage sludge to the land, to sewage sludge or a material derived from sewage sludge that is applied to the land, and to the land on which sewage sludge or a material derived from sewage sludge is applied.

2.a.i. 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 bulk sewage sludge is applied to the land if the bulk sewage sludge is *Exceptional Quality* as defined in LAC 33:IX.6901.I and the preparer has received and maintains an Exceptional Quality Permit 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.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

b. ...

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.6901.I and the preparer has received and maintains an Exceptional Quality Permit 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.6901.I and the preparer has received and maintains an Exceptional Quality Permit 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.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

A.3.b. - C.1.a.ii.(c). ...

b. No person shall apply sewage sludge or a material derived from sewage sludge to the land except in accordance with the requirements in this Chapter.

c. The person who applies sewage sludge or a material derived from sewage sludge to the land shall obtain information needed to comply with the requirements in this Chapter.

d. Sewage sludge or a material derived from sewage sludge shall not be applied to the land until a determination has been made by the administrative authority that the land application site is a legitimate beneficial use site.

#### 2. General Management Practices

a. All Sewage Sludge or Material Derived from Sewage Sludge

i. ...

ii. Sewage sludge or material derived from sewage sludge shall be applied to the land only in accordance with the requirements pertaining to slope in Table 1 of LAC 33:IX.6903.C.

iii. In addition to the restrictions addressed in Clause C.2.a.ii of this Section, all sewage sludge or material derived from sewage sludge 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 or a material derived from sewage sludge 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 administrative authority:

(a) - (b). ...

(c) established school, hospital, institution, business, day-care facility, nursing home, hotel/motel, playground, park, golf course, or restaurant/food establishment—1,000 feet, unless special permission is granted by a qualified representative of the established school, hospital, institution, business, day-care facility, nursing home, hotel/motel, playground, park, golf course, or restaurant/food establishment. The permission must be in the form of a notarized affidavit executed by the owner waiving the 1,000-foot buffer zone. However, in no case shall the application area be located less than 200 feet from any of the above establishments;

(d). property boundary—100 feet, unless special permission is granted by the property owner(s); and

(e). occupied residential home or structure—500 feet, unless special permission is granted by the owner and/or lessee of the occupied residential home or structure. The permission must be in the form of a notarized affidavit executed by the owner and/or lessee waiving the 500-foot buffer zone. However, in no case shall land application of sewage sludge be conducted less than 200 feet from the occupied residential home or structure.

v. Sewage sludge or a material derived from sewage sludge shall not be applied to agricultural land, forest, or a reclamation site during the months when the water table is less than or at 2 feet below the soil surface as indicated in the Parish Soil Surveys or the Water Features Data published by the Natural Resources Conservation Service (NRCS); or some form of monitoring device shall be provided to ensure that the annual high water table is greater than 2 feet below the soil surface at the time of application.

vi. The person who applies sewage sludge or a material derived from sewage sludge to agricultural or forest land shall provide proof to the administrative authority that a full nutrient management plan has been developed for the agricultural or forest land where the sewage sludge or a material derived from sewage sludge is applied. The full nutrient management plan shall be developed by the Natural Resource Conservation Service, a certified soil scientist, a certified crop advisor, or a local LSU Agricultural Center Cooperative Extension Service agent.

b. - b.ii.(d). ...

b. One of the vector attraction reduction requirements in LAC 33:IX.6909.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.6909.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.

G. Frequency of Monitoring

1. The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3, and Table 4 of LAC 33:IX.6903.D; the frequency of monitoring for pathogen density requirements in LAC 33:IX.6909.C.1 and 2.b; and the frequency of monitoring for vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-d and g-h shall be the frequency specified in Table 1 of LAC 33:IX.6903.G.

Table 1 of LAC 33:IX.6903.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).

2. After the sewage sludge has been monitored for two years at the frequency in Table 1 of LAC 33:IX.6903.G, the permitting authority may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in LAC 33:IX.6909.C.1.e.ii and iii.

H. Recordkeeping

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.6901.I, 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. Additional Recordkeeping

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.4.a of this Section.

b. - b.ii.(c), Certification. ...

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.6903.D, the Class B pathogen requirements in LAC 33:IX.6909.C.2, and one of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-j:

i. - ii.(b). ...

(c). when the vector attraction reduction requirement in either LAC 33:IX.6909.D.2.i or j is met, a description of how the vector attraction reduction requirement is met;

(d). - (e), Certification. ...

Table 1 of LAC 33:IX.6903.C	
Slope Limitations for Land Application of Sewage Sludge	
Slope Percent	Application Restriction
0-3	None, except drainage to prevent standing water shall be provided.
3-6	A 100-foot vegetated runoff area should be provided at the down slope end of the application area if a liquid is applied. Measures should be taken to prevent erosion.
6-12	Liquid material must be injected into the soil. Solid material must be incorporated into the soil if the site is not covered with vegetation. A 100-foot vegetated runoff area is required at the down slope end of the application area for all applications. Measures must be taken to prevent erosion. Terracing may be required if deemed a necessity by the 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. - D.2.d.Table 4....

3. Repealed.

Equation (1). Repealed.

E. - F.1.c. ...

2. Vector Attraction Reduction—Sewage Sludge

a. One of the vector attraction reduction requirements in LAC 33:IX.6909.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.

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.6903.D and that meets the Exceptional Quality or Class B pathogen requirements in LAC 33:IX.6909.C, and the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-j:

d.i. - e.ii.(a). ...

(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.6903.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."

I. Reporting

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.6901.I, that prepare sewage sludge shall submit the information in Paragraph H.1 of this Section to the Office of Environmental Services, Water Permits Division, 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 Permit are as indicated in Subparagraph J.4.b of this Section.

b. All other *Class I sludge management facilities*, as defined in LAC 33:IX.6901.I, that apply bulk sewage sludge to the land and are required to obtain a permit under LAC 33:IX.6901.C, shall submit the information in Paragraph H.2 of this Section for the appropriate requirements, to the Office of Environmental Services, Water Permits Division, as indicated in the following clauses.

i. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.6903.G of once per year, the reporting period and the report due date shall be as specified in Table 1 of LAC 33:IX.6903.I.

ii. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.6903.G of once per quarter (four times per year), the reporting period and the report due date shall be as specified in Table 2 of LAC 33:IX.6903.I.

iii. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.6903.G of once per 60 days (six times per year), the reporting period and the report due date shall be as specified in Table 3 of LAC 33:IX.6903.I.

iv. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.6903.G of once per month (12 times per year), the reporting period and the report due date shall be as specified in Table 4 of LAC 33:IX.6903.I.

Table 2 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per Quarter)	Report Due Date
January, February, March	August 28
April, May, June	
July, August, September	February 28
October, November, December	
<sup>1</sup> Separate reports must be submitted for each monitoring period.	

Table 3 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per 60 Days)	Report Due Date
January, February	June 28
March, April	
May, June	October 28
July, August	
September, October	February 28
November, December	
<sup>1</sup> Separate reports must be submitted for each monitoring period.	

Table 4 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per Month)	Report Due Date
January	May 28
February	
March	
April	August 28
May	
June	
July	November 28
August	
September	
October	February 28
November	
December	
<sup>1</sup> Separate reports must be submitted for each monitoring period.	

3. The 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 Subparagraph I.2.b of this Section if deemed necessary for the protection of human health or the environment.

J. Exceptional Quality Permit

1.a. The person who prepares the sewage sludge or a material derived from sewage sludge who desires to receive an Exceptional Quality Permit must prepare sewage sludge that is of *Exceptional Quality* as defined in LAC 33:IX.6901.I and shall forward to the Office of Environmental Services, Water Permits Division, an Exceptional Quality Permit Request Form having the following information:

i. - vi.(h). ...

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 Permit Request Form.

2. Any Exceptional Quality Permit shall have a term of not more than five years.

Table 1 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period (Once per Year)	Report Due Date
January - December	February 28

3.a. For the term of the Exceptional Quality Permit, 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.6909.

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.6901.I, 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 Chapter 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.6901.I.

4.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.3.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.6909.C.1 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.6909.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.4.a of this Section to the Office of Environmental Services, Water Permits Division, on a quarterly basis. The schedule for quarterly submission is contained in the following table.

Schedule For Quarterly Submission	
Monitoring Period	Report Due Date
January, February, March	May 28
April, May, June	August 28
July, August, September	November 28
October, November, December	February 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),

repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**§6905. Siting and Operation Requirements for Commercial Preparers of Sewage Sludge**

A. Exemption. A *publicly owned treatment works (POTW)*, as defined in LAC 33:IX.6901.I, shall be exempted from the siting requirements in LAC 33:IX.6909.B and the facility closure requirements in Paragraph C.3 of this Section if the POTW prepares sewage sludge or a sewage sludge treatment facility is located within the POTW's perimeter.

B. 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 that are not located within the boundaries of a legally zoned and established industrial park:

i. shall not be located less than 1,000 feet from an established school, hospital, institution, day-care facility, nursing home, hotel/motel, playground, park, golf course, or restaurant/food establishment unless special permission is granted by the owner of the established school, hospital, institution, day-care facility, nursing home, hotel/motel, playground, park, golf course, or restaurant/food establishment. The permission must be in the form of an affidavit executed by the owner waiving the 1,000-foot buffer zone. However, in no case shall the facility be located less than 200 feet from any of the above establishments;

ii. shall not be located less than 500 feet from an established home residence unless special permission has been granted by the owner and/or lessee of the established home residence in the form of an affidavit executed by the owner and/or lessee waiving the 500-foot buffer zone. However, in no case shall the facility be located less than 200 feet from an established home residence.

c. Facilities shall not be located less than 300 feet from a private potable water supply or a private water supply elevated storage tank or ground storage tank unless special permission is granted by the private potable water supply owner.

d. Facilities shall not be located less than 300 feet from a public potable water supply or a public water supply elevated storage tank or ground storage tank unless special permission is granted by the Department of Health and Hospitals.

e. Untreated sewage sludge and/or supplement or feedstock material to be utilized at a facility shall not be located less than 25 feet from a subsurface drainage pipe or drainage ditch that discharges directly to waters of the state.

f. Facilities that prepare or compost only sewage sludge or blend, mix, or compost sewage sludge and have only woodchips or yard waste (e.g., leaves, lawn clippings, or branches) as feedstock or supplements shall not be located closer than the greater of the following distances:

i. 1,200 feet from any aircraft's approach or departure airspace or *air operations area* as defined in LAC 33:IX.6901.I; or

ii. the distance called for by the U. S. Department of Transportation Federal Aviation Administration's airport design requirements.

g. Facilities that prepare sewage sludge that include food or other municipal solid waste as feedstock or supplements or prepare sewage sludge with grease that was pumped or removed from a food service facility shall not be located closer than:

i. 5,000 feet from any airport property boundary (including any aircraft's approach or departure airspace or air operations area) if the airport does not sell Jet-A fuel and serves only piston-powered aircrafts; or

ii. 10,000 feet from any airport property boundary (including any aircraft's approach or departure airspace or air operations area) if the airport sells Jet-A fuel and serves turbine-powered aircrafts or sells Jet-A fuel and is designed to serve turbine-powered and/or piston-powered aircrafts.

h. Facilities shall not be located less than 100 feet from wetlands, surface waters (streams, ponds, lakes), or areas historically subject to overflow from floods.

i. Facilities shall only be located in a hydrologic section where the historic high water table is at a minimum of a 3-foot depth below the surface, or the water table at the facility shall be controlled to a minimum of a 3-foot depth below this zone.

j. Storage and processing of sewage sludge or any material derived from sewage sludge is prohibited within any of the buffer zones indicated in Subparagraphs B.1.a-i of this Section.

k. 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.

l. 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.

m. 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 or treatment 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 or treatment facility shall be equipped with a central control and recordkeeping system for tabulating the information required in Clause B.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 LAC 33:IX.Chapters 23-67.

## 4. Facility Geology

a. Except as provided in Subparagraph B.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 B.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 B.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.

### C. 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 Office of Environmental Services, Water Permits Division.

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 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 LAC 33:IX.Chapters 23-67; 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 in an approved solid waste facility.

b. Composted sewage sludge shall be used, sold, or disposed 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 unit 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 C.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, Water Permits Division, confirming that the requirements of Subparagraph C.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, Water 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:Part 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 C.3.c.iv of this Section shall not apply.

(b). Excepting those sites closed in accordance with Subclause C.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), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:

### **§6907. Financial Assurance Requirements for Commercial Preparers or Land Appliers of Sewage Sludge**

A. - A.2. ...

a. Evidence of liability insurance may consist of either a signed duplicate original of a commercial preparer or land applier of sewage sludge liability endorsement, or a certificate of insurance. All liability endorsements and certificates of insurance must include:

2.a.i. - 5.a.i. ...

ii. the guarantor is the parent corporation of the permit holder or applicant of the commercial preparer or land applier of sewage sludge facility or facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

A.5.a.iii. - B.8.d. ...

i. a list of commercial preparer or land applier 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 preparer or land applier 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 preparer or land applier 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 preparer or land applier 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. - i.i. ...



ii. the guarantor is the parent corporation of the permit holder or applicant of the commercial preparer or land applicer 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 preparer or land applicer of sewage sludge rules and regulations for the closure and post-closure care of facilities, as identified in the guarantee;

8.i.iv. - 12.d. ...

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), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:

### **§6909. Pathogens and Vector Attraction Reduction**

A. Scope. This Section contains the following:

1. ...

2. the site restrictions for land on which a Class B sewage sludge is applied; and

3. the 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.6901.I, the following definitions apply to this Section.

\* \* \*

C. Pathogens

1. Sewage Sludge—Exceptional Quality

a. - b. ...

c. Exceptional Quality—Alternative 1

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage 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.6901.I.

c.ii. - d. ...

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 4 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.6901.I.

ii.(a). - ii.(c). ...

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 4 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.6901.I.

ii.(a). - iii.(d). ...

f. Exceptional Quality—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 4 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.6901.I.

ii. ...

iii. The density of viable helminth ova in the sewage sludge shall be less than one per 4 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.6901.I.

g. Exceptional Quality—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 4 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.6901.I.

ii. ...

h. Exceptional Quality—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 4 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.6901.I.

1.h.ii. - 2.e.v. ...

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 administrative authority.

vii. - viii. ...

3. Repealed.

a. Repealed.

b. Repealed.

D. - D.1.c. ...

d. Repealed.

2.a. - 2.j.ii. ...

k. Repealed.

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), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**§6911. Incineration**

A. - A.2. ...

B. Special Definitions. All terms not defined below shall have the meaning given them in LAC 33:IX.6901.I and in LAC 33:III.111.

\* \* \*

C. - C.2.f. ...

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.6901.H or other methods and procedures as specified in this Section, except as provided for in Subparagraph C.2.b of this Section.

C.4.a. - D.6.b.iv. ...

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 "2540 G Total Fixed and Volatile Solids in Solid and Semisolid Samples" shall be used to determine dry sewage sludge content of each sample (total solids residue), except that:

D.6.v.(a). - I.3.c. ...

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), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**§6913. Standard Conditions Applicable to All Sewage Sludge (Biosolids) Use or Disposal Permits**

A. General Conditions

1. Introduction. In accordance with the provisions of this Chapter all Sewage Sludge (Biosolids) Use or Disposal Permits shall incorporate either expressly or by reference all conditions and requirements applicable to the preparation and use or disposal of sewage sludge set forth in the Louisiana Environmental Quality Act, as amended, as well as all applicable regulations.

2. Duty to Comply. The permittee must comply with all conditions of an issued final permit. Any permit noncompliance constitutes a violation of the Louisiana Environmental Quality Act and is grounds for enforcement

action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3. Enforcement Actions

a. The department may take enforcement action as prescribed by state law or regulation against any person who:

i. fails to submit a permit application as required by law;

ii. knowingly makes any false statement, representation, or certification in any application, record, report, or other document filed with the department pursuant to the act or these regulations. Violations of this provision may subject the violator to the penalties provided for in the act for perjury or false statements;

iii. fails to correct deficiencies in the permit application, or upon becoming aware that any relevant facts or information were omitted in a permit application or in any report to the department, fails to promptly submit such facts or information;

iv. fails to take any necessary action to complete the permit issuance, such as payment of fees or publication of required notices; or

v. fails to comply with any condition of the permit.

b. Exception. In cases where the permit application is withdrawn by the applicant, a written notification shall be provided to the Office of Environmental Services, Water Permits Division, stating that no sewage sludge use or disposal practice or other activity that would require a permit from the Office of Environmental Services, Water Permits Division, is currently taking place. Provided that the application was not made in response to previous enforcement action, the applicant is then exempt from enforcement action for causes listed under this Paragraph.

4. Toxic Pollutants

a. If any sewage sludge use or disposal standard or prohibition is promulgated under this Chapter or Section 405 of the Clean Water Act for a pathogen, pollutant, vector attraction reduction, management practice, etc., and that standard or prohibition is more stringent than any applicable requirement in an existing permit, the administrative authority shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the sewage sludge use or disposal standard or prohibition.

b. The permittee shall comply with sewage sludge use or disposal standards or prohibitions established under this Chapter within the time frame provided in the regulations that established these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Duty to Reapply for an Individual Permit. If the permittee wishes to continue an activity regulated by an existing permit after the expiration date of that permit, the permittee must apply for and obtain a new permit. The new application shall be submitted at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the administrative authority. (The administrative authority shall not grant permission for applications to be submitted later than the expiration date of the existing permit.) A permit that was issued in accordance with these regulations and that has expired shall be administratively continued until such time as a decision on

an application to continue an activity under the permit has been issued by the administrative authority, if the application was received by the department at least 180 days prior to the permit expiration.

6. Permit Action. The conditions set forth in LAC 33:IX.2903, 2905, 2907, 3105, and 6509 for cause for modification, revocation and reissuance, and for termination of a permit shall apply to permits issued in accordance with these regulations.

7. Property Rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

8. Duty to Provide Information. The permittee shall furnish to the administrative authority, within a reasonable time, any information that the administrative authority may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the administrative authority, upon request, copies of records required to be kept by the permit.

9. State Laws. Nothing in the permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation.

10. Severability. If any provision of these regulations, or the application thereof, is held to be invalid, the remaining provisions of these regulations shall not be affected, so long as they can be given effect without the invalid provision. To this end, the provisions of these regulations are declared to be severable.

11. Draft Permits. The conditions set forth in LAC 33:IX.3107.A for draft permits shall also pertain to permits issued in accordance with these regulations.

12. Fact Sheet. A fact sheet shall be prepared for each draft permit issued in accordance with these regulations. The fact sheet shall include, but not be limited to, the following:

- a. the name of the applicant;
- b. the name of the facility;
- c. the address of the facility;
- d. the physical location of all facilities that are utilized to prepare sewage sludge or a material derived from sewage sludge;
- e. the physical location of all land application sites;
- f. general and management practices;
- g. soil and site restrictions;
- h. monitoring, sampling and analysis, and reporting requirements; and
- i. all other information that is pertinent to the facility and to the permitting process.

13. Public Notice and Public Comment Period. The conditions set forth in LAC 33:IX.3113 for public notices and the public comment period shall apply to all permits issued in accordance with these regulations.

14. Public Comments and Requests for Public Hearings. The conditions set forth in LAC 33:I.1505 and IX.3115 for public comments and requests for public hearings shall apply to all permits issued in accordance with these regulations.

15. Public Hearings. The conditions set forth in LAC 33:IX.3117 for public hearings shall apply to all permits issued in accordance with these regulations.

16. Obligations to Raise Issues and Provide Information during the Public Comment Period. The conditions set forth in LAC 33:IX.3119 for the obligations to raise issues and provide information during the public comment period shall apply to all permits issued in accordance with these regulations.

17. Reopening of the Public Comment Period. The conditions set forth in LAC 33:IX.3121 for reopening of the public comment period shall apply to all permits issued in accordance with these regulations.

18. Issuance of a Final Permit Decision. After the close of the public comment period under Paragraph A.13 of this Section on a draft permit, the administrative authority shall issue a final permit decision. The administrative authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a Sewage Sludge (Biosolids) Use or Disposal Permit. For the purposes of this Section a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

19. Response to Comments. The conditions set forth in LAC 33:IX.3125 for responding to comments shall apply to all permits issued in accordance with these regulations.

#### B. Proper Operation and Maintenance

1. Need to Halt or Reduce Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

2. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any sewage sludge use or disposal practice in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment. The permittee shall also take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying practice.

#### 3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

b. The permittee shall provide an adequate operating staff that is duly qualified to carry out operation and maintenance and other functions necessary to ensure compliance with the conditions of the permit.

#### C. Monitoring and Records

1. Inspection and Entry. The conditions set forth in LAC 33:IX.6513 for inspection and entry shall apply to all permits issued in accordance with these regulations.

2. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under LAC 33:IX.6901.H or, unless otherwise specified in 40 CFR Part 503, as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the sludge reporting form specified by the administrative authority.

3. Laboratory Accreditation

a. LAC 33:I.Chapters 45-59 provide requirements for an accreditation program specifically applicable to commercial laboratories, wherever located, that provide chemical analyses, analytical results, or other test data to the department, by contract or by agreement, and the data is:

- i. submitted on behalf of any facility, as defined in R.S.30:2004;
- ii. required as part of any permit application;
- iii. required by order of the department;
- iv. required to be included on any monitoring report submitted to the department;
- v. required to be submitted by a contractor; or
- vi. otherwise required by department regulations.

b. The department laboratory accreditation program is designed to ensure the accuracy, precision, and reliability of the data generated, as well as the use of department-approved methodologies in generation of that data. Laboratory data generated by commercial environmental laboratories that are not accredited under these regulations will not be accepted by the department. Retesting of analyses will be required by an accredited commercial laboratory. Where retesting is not possible, the data generated will be considered invalid and in violation of the LPDES permit.

c. Regulations on the environmental laboratory accreditation program and a list of laboratories that have applied for accreditation are available on the department's website. Questions concerning the program may be directed to the Office of Environmental Assessment, Laboratory Services Division.

D. Reporting Requirements

1. Facility Changes. The permittee shall give notice to the Office of Environmental Services, Water Permits Division, as soon as possible of any planned physical alterations or additions to the permitted facility.

2. Anticipated Noncompliance. The permittee shall give advance notice to the Office of Environmental Services, Water Permits Division, of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers. A permit is not transferable to any person except after notice to the Office of Environmental Services, Water Permits Division. The administrative authority may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Louisiana Environmental Quality Act. Except as provided in LAC 33:IX.2901.A, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary under the Louisiana Environmental Quality Act.

4. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of a permit shall be submitted no later than 14 days following each schedule date.

5. Other Noncompliance. The permittee shall report all instances of noncompliance not reported under Paragraph D.4 of this Section at the time monitoring reports are submitted.

6. Other Information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the administrative authority, it shall promptly submit such facts or information.

7. Signatory Requirements. All applications, reports, or information submitted to the administrative authority shall be signed and certified.

a. All permit applications shall be signed as follows:

i. for a corporation—by a responsible corporate officer. For the purpose of this Section, a *responsible corporate officer* means:

(a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation. These responsible corporate officers are presumed to have the authority to sign permit applications unless the corporation has notified the administrative authority to the contrary; or

(b) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to ensure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and the authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals;

ii. for a partnership or sole proprietorship—by a general partner or the proprietor, respectively; or

iii. for a municipality, state, federal, or other public agency—by either a principal executive officer or ranking elected official. For purposes of this Paragraph, a principal executive officer of a federal agency includes:

(a) the chief executive officer of the agency; or

(b) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA).

b. All reports required by permits and other information requested by the administrative authority shall be signed by a person described in Subparagraph D.7.a of this Section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

i. the authorization is made in writing by a person described in Subparagraph D.7.a of this Section;

ii. the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and

iii. the written authorization is submitted to the administrative authority.

c. Changes to Authorization. If an authorization under Subparagraph D.7.b of this Section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Subparagraph D.7.b of this Section must be submitted to the administrative authority prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

d. Certification. Any person signing a document under the provisions of Subparagraph D.7.a or b of this Section, shall make the following certification.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with the system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

8. Availability of Reports. All recorded information (completed permit application forms, fact sheets, draft permits, or any public document) not classified as confidential information under R.S. 30:2030(A) and 2074(D) and designated as such in accordance with LAC 33:IX.2323.A and C and LAC 33:IX.6503 shall be made available to the public for inspection and copying during normal working hours in accordance with the Public Records Act, R.S. 44:1 et seq. Claims of confidentiality for the following will be denied:

a. the name and address of any permit applicant or permittee;

b. permit applications, permits, and effluent data;

c. information required by the Sewage Sludge (Biosolids) Use or Disposal Permit Application forms provided by the administrative authority. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

## Chapter 71. Appendices

### §7135. Appendix R—Financial Assurances Documents

#### Document 1. Liability Endorsement

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE  
LIABILITY ENDORSEMENT  
\* \* \*

[See Prior Text in Liability Endorsement]

#### Document 2. Certificate of Insurance

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
CERTIFICATE OF LIABILITY INSURANCE  
\* \* \*

[See Prior Text in Certificate of Liability Insurance]

#### Document 3. Letter of Credit

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
IRREVOCABLE LETTER OF CREDIT  
\* \* \*

[See Prior Text in Irrevocable Letter of Credit]

(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 preparer or land applier 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.6907.A.

\* \* \*

[See Prior Text in Irrevocable Letter of Credit]

#### Document 4. Trust Agreement

COMMERCIAL PREPARER OR LAND APPLIER 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 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 preparer or land applier 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:

\* \* \*

[See Prior Text in Trust Agreement]

**Document 5. Surety Bond**

COMMERCIAL PREPARER OR LAND APPLIER 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. and specifically 2074(B)(4), to have a permit in order to own or operate the commercial preparer or land applier 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.6907, 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.6907.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.6907.B and the conditions of the commercial preparer or land applier 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.

\* \* \*

[See Prior Text in Financial Guarantee Bond]

**Document 6. Performance Bond**

COMMERCIAL PREPARER OR LAND APPLIER 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. and specifically 2074(B)(4), to have a permit in order to own or operate the commercial preparer or land applier 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.6907.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.6905.C.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.6905.C.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.6907.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.6907.B and the conditions of the commercial preparer or land applier 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.

\* \* \*

[See Prior Text in Facility Performance Bond]

**Document 7. Letter of Credit**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
IRREVOCABLE LETTER OF CREDIT

\* \* \*

[See Prior Text in Irrevocable Letter of Credit]

**Document 8. Certificate of Insurance**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR  
POST-CLOSURE CARE

\* \* \*

[See Prior Text in Certificate of Insurance]

**Document 9. Letter from the Chief Financial Officer**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
LETTER FROM THE CHIEF FINANCIAL OFFICER  
(LIABILITY COVERAGE, CLOSURE, AND/OR  
POST-CLOSURE)

\* \* \*

[See Prior Text in Letter]

(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 preparer or land applier 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.6907.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 preparer or land applier 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.6907.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.6907.B" or "LAC 33:IX.6907.A and B"], [insert "liability coverage," "closure," "post-closure," or "closure and post-closure"] care of the following commercial preparer or land applier 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 preparer or land applier 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.6907.A and/or B. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

\* \* \*

[See Prior Text in Letter]

**Document 10. Corporate Guarantee**

COMMERCIAL PREPARER OR LAND APPLIER OF  
SEWAGE SLUDGE FACILITY  
CORPORATE GUARANTEE FOR LIABILITY COVERAGE,  
CLOSURE, AND/OR POST-CLOSURE CARE

\* \* \*

[See Prior Text in Corporate Guarantee]

(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 preparer or land applier 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.]

\* \* \*

[See Prior Text in Corporate Guarantee]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:818 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2519 (October 2005), LR 33:

Mike D. McDaniel, Ph.D.  
Secretary

0705#037

**DECLARATION OF EMERGENCY**

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

Intermediate Care Facilities for the Mentally Retarded  
Direct Service Professionals Wage Enhancement  
(LAC 50:VII.32903)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:VII.32903 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for intermediate care facilities for the mentally retarded (ICFs/MR) that included the Inventory for Client and Agency Planning (ICAP) instruments (*Louisiana Register*, Volume 31, Number 9).

The bureau by Emergency Rule amended the provisions of the September 20, 2005 Rule governing the reimbursement methodology for ICFs/MR by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the facility. It is the intent that this wage enhancement be paid to the direct care staff. This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. This action is being taken to prevent imminent peril to the health and well-being of ICFs/MR residents by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff.

Effective June 10, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for intermediate care facilities for the mentally retarded by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part VII. Long Term Care**

**Subpart 3. Intermediate Care Facilities for the Mentally Retarded**

**Chapter 329. Reimbursement**

**Subchapter A. Reimbursement Methodology**

**§32903. Rate Determination**

A. - D.1.d. ...

\* \* \*

e. Direct Service Provider Wage Pass-Through. For dates of service on or after February 9, 2007, the direct care reimbursement in the amount of \$2 per hour to ICF-MR providers shall include a direct care service worker wage enhancement incentive. It is the intent that this wage enhancement be paid to the direct staff. Non compliance with the wage enhancement shall be subject to recoupment.

i. At least 75 percent of the wage pass-through shall be paid to the direct support professional and 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

ii. The wage enhancement will be added on to the current ICAP rate methodology as follows:

(a) per diem rates for recipients residing in 1-8 bed facilities will increase \$16;

(b) per diem rates for recipients residing in 9-16 bed facilities will increase \$15; and

(c) per diem rates for recipients residing in 16+ bed facilities will increase \$8.

D.2. - H.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1592 (July 2005), repromulgated LR 31:2253 (September 2005), amended LR 33:

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



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

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

0705#093

## DECLARATION OF EMERGENCY

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

#### Nursing Facilities Direct Support Professionals Wage Enhancement (LAC 50:VII.1305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:VII.1305 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule to establish a prospective payment system for nursing facilities based on recipient care needs that incorporates acuity measurements as determined under the Resource Utilization Group III (RUG III) resident classification methodology (*Louisiana Register*, Volume 28, Number 8). The August 20, 2002 Rule was subsequently amended to adopt provisions governing a quarterly adjustment of individual nursing facility rates based on overall case mix and to allow for the offset of installation costs for automatic fire sprinkler systems and two-hour rated walls in Medicaid-certified nursing facilities (*Louisiana Register*, Volume 32, Number 12). The bureau by Emergency Rule amended the provisions of the December 20, 2006 Rule governing the reimbursement methodology for nursing facilities by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the nursing facility (*Louisiana Register*, Volume 33, Number 2). It is the intent that this wage enhancement be paid to the direct care staff. This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. This action is being taken to promote the health and well-being of nursing facility residents by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff.

Effective June 10, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff.

## Title 50 PUBLIC HEALTH—MEDICAL ASSISTANCE Part VII. Long Term Care Services Subpart 1. Nursing Facilities

### Chapter 13. Reimbursement

#### §1305. Rate Determination

A. - D.1.h.Example ...

i. For dates of service on or after February 9, 2007, the facility-specific direct care rate will be increased by a \$4.70 wage enhancement prior to the case-mix adjustment for direct care staff. The \$4.70 wage enhancement will be included in the direct care component of the floor calculations. It is the intent that this wage enhancement be paid to the direct care staff.

D.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1474 (June 2002), repromulgated LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:

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

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

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

0705#094

## DECLARATION OF EMERGENCY

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

#### State Children's Health Insurance Program Coverage of Prenatal Care Services (LAC 50:III.Chapter 201)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:III.Chapter 201 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XXI of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implemented a Medicaid expansion program under the provisions of Title XXI of the Social Security Act called the Louisiana Children's Health Insurance Program (LaCHIP) (*Louisiana Register*, Volume 24, Number 10). LaCHIP provided health

care coverage to uninsured children up to age 19 with family income below 133 percent of the federal poverty level (FPL). The October 20, 1998 Rule was subsequently amended to: 1) implement the second phase of LaCHIP which expanded coverage to uninsured children with family income up to 150 percent of the FPL (*Louisiana Register*, Volume 25, Number 9); and 2) implement the third phase which expanded coverage to uninsured children with family income up to 200 percent of the FPL (*Louisiana Register*, Volume 26, Number 12).

The bureau now proposes to expand coverage to children under Title XXI of the Social Security Act by implementing a stand-alone State Children's Health Insurance Program (SCHIP) to provide coverage of prenatal care services to low income, non-citizen women. This action is being taken to promote the health and well-being of children by increasing access to prenatal care services in order to reduce the occurrence of premature deliveries and costly emergency care for drop-in deliveries. It is estimated that the implementation of this Emergency Rule will increase expenditures in the SCHIP Program by approximately \$1,601,810 for fiscal year 2006-07.

Effective May 1, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts provisions to establish State Children's Health Insurance Program coverage of prenatal care services as an expansion of coverage for children under the provisions of Title XXI of the Social Security Act.

#### **Title 50**

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

#### **Part III. Eligibility**

#### **Subpart 11. State Children's Health Insurance Program**

#### **Chapter 201. Prenatal Care Services**

#### **§20101. General Provisions**

A. Effective May 1, 2007, the Department of Health and Hospitals will provide State Children's Health Insurance Program (SCHIP) coverage of prenatal care services to low income, non-citizen women as an expansion of coverage for children under Title XXI of the Social Security Act. SCHIP coverage of prenatal care services will be an expansion of coverage for children, from conception to birth, with income from 0 percent through 200 percent of the federal poverty level (FPL).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§20103. Eligibility Criteria**

A. An applicant must be a Louisiana resident and cannot be eligible for Medicaid benefits under the provisions of Title XIX of the Social Security Act.

B. Applicants must be uninsured at the time of application.

1. Applicants are considered to be uninsured if they do not have creditable health insurance that provides coverage of prenatal care services.

C. Recipients must have family income at or below 200 percent of the FPL.

D. Recipients cannot be covered under a group health insurance plan or have creditable health insurance coverage and cannot have access to a state employee health benefits plan.

1. A state employee health benefits plan is a plan that is offered or organized by the state government, or on behalf of state employees, or other public agency for employees within the state.

E. Recipients shall be eligible to receive SCHIP coverage of prenatal care services from the month of conception or the first month of eligibility following conception, whichever is later, through the month of birth.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

#### **§20105. Services**

A. Covered Services. Recipients shall receive coverage of pregnancy-related health care services and associated medically necessary services for conditions that, if not treated, would complicate the pregnancy. Pregnancy-related health care services which may be covered include:

1. inpatient and outpatient health care services;
2. physician services;
3. surgical services;
4. clinic and other ambulatory health care services;
5. prescription and over-the-counter medications;
6. laboratory and radiological services;
7. pre-natal care and pre-pregnancy family services and supplies;
8. inpatient and outpatient mental health services other than those services relative to substance abuse treatment;
9. durable medical equipment and other medically-related or remedial devices;
10. disposable medical supplies;
11. nursing care services;
12. extended dental services for pregnant women;
13. case management services;
14. physical therapy, occupational therapy and services for individuals with speech, hearing and language disorders;
15. medical transportation services; and
16. any other medically necessary medical, diagnostic, screening, preventive, restorative, remedial, therapeutic or rehabilitative services.

B. Service Limits. Sterilization procedures are not a covered service in this program. Other Medicaid-specific benefit limits, age limits and prior authorization requirements may be applicable to the services covered in this program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

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

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

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

0705#050

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Early and Periodic Screening, Diagnosis, and Treatment  
Personal Care Services  
Personal Care Workers Wage Pass-Through  
(LAC 50:XV.7321)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.7321 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for personal care services in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (*Louisiana Register*, Volume 28, Number 2). The bureau promulgated an Emergency Rule to amend the provisions of the February 20, 2003 Rule governing the reimbursement methodology for personal care services in the EPSDT Program to implement an hourly wage pass-through payment to providers for personal care workers (*Louisiana Register*, Volume 33, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. This action is being taken to promote the health and well-being of Medicaid recipients by assuring continued access to services through assisting providers to recruit and retain sufficient personal care workers.

Effective June 10, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for personal care services in the EPSDT Program to implement a wage pass-through payment to providers for personal care workers.

#### Title 50

### PUBLIC HEALTH-MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

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

#### Chapter 73. Personal Care Services

#### §7321. Reimbursement

A. ...

#### B. Personal Care Workers Wage Pass-Through

1. Effective February 9, 2007, an hourly wage pass-through payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) personal care workers who provide services to Medicaid recipients.

a. At least 75 percent of the wage pass-through shall be paid to personal care workers as wages. If less than 100 percent of the pass-through is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. The minimum hourly rate paid to personal care workers shall be the current minimum wage plus 75 percent of the wage pass-through.

2. Providers shall be required to submit a certified wage register to the department verifying the personal care workers' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

a. gross wage paid to the direct support professional(s);

b. total number of direct support hours worked; and

c. the amount paid in employee benefits.

3. A separate report shall be submitted for paid overtime.

4. The provider shall submit quarterly wage reports that verify that the 75 percent wage pass-through has been paid to the appropriate staff.

5. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage pass-through.

6. Audit procedures shall be established by the department to verify the wage-pass through payments reimbursed to providers.

7. Noncompliance or failure to demonstrate that the wage pass-through was paid directly to personal care workers may result in:

a. forfeiture of eligibility for wage pass-through payments;

b. recoupment of previous wage pass-through payments;

c. Medicaid fraud charges; and

d. loss of provider license.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:179 (February 2003), amended LR 33:

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

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

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

0705#090

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers  
Adult Day Health Care  
Direct Service Professionals Wage Enhancement  
(LAC 50:XXI.3109)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends LAC 50:XXI.3109 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services adopted provisions governing the reimbursement methodology for the Adult Day Health Care (ADHC) Waiver (*Louisiana Register*, Volume 30, Number 9). The department, by Emergency Rule, amended the provisions of the September 20, 2004 Rule governing the reimbursement methodology for the ADHC Waiver by increasing reimbursement to providers to implement a wage enhancement for direct care staff (*Louisiana Register*, Volume 33, Number 2). It is the intent that the wage enhancement be paid to the direct care staff. This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. This action is being taken to promote the health and well-being of waiver recipients by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff.

Effective June 10, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends the provisions governing the reimbursement methodology for the Adult Day Health Care Waiver by increasing reimbursement to providers to implement a wage pass-through payment for direct care workers.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

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

#### Waivers

#### Subpart 3. Adult Day Health Care

#### Chapter 31. Reimbursement

#### §3109. Provider Reimbursement

##### A. - B.7.a. ...

i. For dates of service on or after February 9, 2007, the facility-specific direct care price will be increased by \$1.11 to include a direct care service worker wage enhancement. It is the intent that this wage enhancement be paid to the direct care service workers.

##### B.7.b. - B.8.b ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2048 (September 2004), amended by

the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

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

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, Louisiana 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0705#091

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers  
Children's Choice—Direct Support  
Professionals Wage Enhancement  
(LAC 50:XXI.12101)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.12101 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for the Children's Choice Waiver (*Louisiana Register*, Volume 28, Number 9). The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions of the September 20, 2004 Rule governing the reimbursement methodology for the Children's Choice Waiver to implement an hourly wage pass-through payment to providers for direct care staff. The department now proposes to amend the provisions of the February 9, 2007 Emergency Rule to also include a wage pass-through, hereafter referred to as a wage enhancement, payment for direct support professionals who provide Center-Based Respite services to Children's Choice recipients. This action is being taken to promote the health and well-being of waiver recipients by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff. It is estimated that implementation of this Emergency Rule will increase expenditures in the Children's Choice Waiver Program by approximately \$2,530 for state fiscal year 2006-2007.

Effective May 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with

Developmental Disabilities amends the provisions of the February 9, 2007 Emergency Rule governing the reimbursement methodology for the Children's Choice Waiver.

#### **Title 50**

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

#### **Part XXI. Home and Community-Based**

##### **Services Waivers**

#### **Subpart 9. Children's Choice**

### **Chapter 121. Reimbursement**

#### **§12101. Reimbursement Methodology**

A. - B.4. ...

5. Direct Support Professionals Wage Enhancement

a. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide Family Support services to Children's Choice recipients.

b. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide Center-Based Respite services to Children's Choice recipients.

c. At least 75 percent of the wage enhancement shall be paid to personal care workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

d. The minimum hourly rate paid to direct support professionals shall be the current minimum wage plus 75 percent of the wage enhancement.

e. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

i. gross wage paid to the direct support professional(s);

ii. total number of direct support hours worked; and

iii. the amount paid in employee benefits.

f. A separate report shall be submitted for paid overtime.

g. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

h. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

i. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

j. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

i. forfeiture of eligibility for wage enhancement payments;

ii. recoupment of previous wage enhancement payments;

iii. Medicaid fraud charges; and

iv. disenrollment in the Medicaid Program.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1987 (September 2002), amended LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0705#084

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals**

##### **Office of the Secretary**

#### **Office for Citizens with Developmental Disabilities**

Home and Community-Based Services Waivers  
Children's Choice—Service Cap Increase  
(LAC 50:XXI.11301)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.11301 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the rules governing the Children's Choice Waiver under the Louisiana Administrative Code (*Louisiana Register*, Volume 28, Number 9). The Children's Choice Waiver provides services with greater flexibility which is appropriate to families who care for children with disabilities. The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to amend the provisions governing the Children's Choice Waiver to increase the service cap.

This action is being taken to promote the health and safety of waiver recipients by assuring that they receive adequate services and supports. It is estimated that implementation of this Emergency Rule will increase expenditures in the Children's Choice Waiver Program by approximately \$1,600,000 for state fiscal year 2006-2007.

Effective May 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the provisions governing the Children's Choice Waiver to increase the service cap.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part XXI. Home and Community-Based Services**  
**Waivers**

**Subpart 9. Children's Choice**

**Chapter 113. Service**

**§11301. Service Cap**

A. Children's Choice services are capped at \$17,000 per individual per plan of care year.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0705#086

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals**  
**Office of the Secretary**

**Office for Citizens with Developmental Disabilities**

Home and Community-Based Services Waivers  
New Opportunities Waiver  
Direct Support Professionals Wage Enhancement  
(LAC 50:XXI.14101)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.14101 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services implemented a new home and community based services waiver, the New Opportunities Waiver (NOW), designed to enhance the support services available to individuals with developmental disabilities (*Louisiana Register*, Volume 30, Number 6). The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions of the June 20, 2004 Rule governing the reimbursement methodology for the New Opportunities

Waiver to implement a wage pass-through payment for direct support professionals who provide Individual and Family Support Services to NOW recipients (*Louisiana Register*, Volume 33, Number 2). The department now proposes to amend the provisions of the February 9, 2007 Emergency Rule to also include a wage pass-through, hereafter referred to as a wage enhancement, payment for direct support professionals who provide Day Habilitation, Supported Employment, Employment-Related Training and Center-Based Respite services to NOW recipients.

This action is being taken to promote the health and well-being of waiver recipients by assisting providers to recruit and retain sufficient direct care staff to assure continued access to services. It is estimated that implementation of this Emergency Rule will increase expenditures in the New Opportunities Waiver Program by approximately \$79,171 for state fiscal year 2006-2007.

Effective May 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the provisions of the February 9, 2007 Emergency Rule governing the reimbursement methodology for the New Opportunities Waiver.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part XXI. Home and Community Based Services**  
**Waivers**

**Subpart 11. New Opportunities Waiver**

**Chapter 141. Reimbursement**

**§14101. Reimbursement Methodology**

A. - E.1. ...

F. Direct Support Professionals Wage Enhancement

1. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide Individual and Family Support Services to New Opportunities Waiver recipients.

2. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide the following services to New Opportunities Waiver recipients:

- a. Day Habilitation;
- b. Supported Employment;
- c. Employment-Related Training; and
- d. Center-Based Respite.

3. At least 75 percent of the wage enhancement shall be paid to personal care workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent, shall be used to pay employer-related taxes, insurance and employee benefits.

4. The minimum hourly rate paid to direct support professionals shall be the current minimum wage plus 75 percent of the wage enhancement.

5. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

a. gross wage paid to the direct support professional(s);

- b. total number of direct support hours worked; and
  - c. the amount paid in employee benefits.
6. A separate report shall be submitted for paid overtime.
7. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.
8. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.
9. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.
10. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

- a. forfeiture of eligibility for wage enhancement payments;
- b. recoupment of previous wage enhancement payments;
- c. Medicaid fraud charges; and
- d. disenrollment in the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0705#088

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

#### Home and Community-Based Services Waivers Supports Waiver Direct Support Professionals Wage Enhancement (LAC 50:XXI.Chapter 61)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.Chapter 61 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the

Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities implemented a home and community-based services waiver, the SUPPORTS WAIVER, to promote the independence of individuals with developmental disabilities by creating vocational and community inclusion options to enhance their lives (*Louisiana Register*, Volume 32, Number 9). This Emergency Rule is being promulgated to amend the provisions of the September 20, 2006 Rule governing the reimbursement methodology for the supports waiver to implement a wage enhancement payment to providers for direct support professionals.

This action is being taken to promote the health and well-being of waiver recipients by assisting providers to recruit and retain sufficient direct care staff to assure continued access to services. It is estimated that implementation of this Emergency Rule will increase expenditures in the Supports Waiver Program by approximately \$151,586 for state fiscal year 2006-2007.

Effective May 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the provisions governing the reimbursement methodology for the supports waiver.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

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

#### Waivers

#### Subpart 5. Supports Waiver

#### Chapter 61. Reimbursement

#### §6101. Reimbursement Methodology

A. - H. ...

#### I. Direct Support Professionals Wage Enhancement

1. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide the following services to support waiver recipients:

- a. Habilitation;
- b. Supported Employment;
- c. Day Habilitation;
- d. Center-Based Respite; and
- e. Prevocational Services.

2. At least 75 percent of the wage enhancement shall be paid to the direct support professional as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent, shall be used to pay employer-related taxes, insurance and employee benefits.

3. The minimum hourly rate paid to direct support professionals shall be the current minimum wage plus 75 percent of the wage enhancement.

4. Providers shall be required to submit a certified wage register to the Department verifying the direct support professionals' gross wages for the quarter ending March 31, 2007. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the direct support professional(s);
- b. total number of direct support hours worked; and
- c. the amount paid in employee benefits.

5. A separate report shall be submitted for paid overtime.

6. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

7. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

8. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

9. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

a. forfeiture of eligibility for wage enhancement payments;

b. recoupment of previous wage enhancement payments;

c. Medicaid fraud charges; and

d. disenrollment from the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0705#089

## DECLARATION OF EMERGENCY

**Department of Health and Hospitals  
Office of the Secretary  
Office of Aging and Adult Services**

Home and Community Based Services Waivers  
Adult Day Health Care  
(LAC 50:XXI.Chapters 21, 23, and 27)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services proposes to amend LAC 50:XXI.2101, 2103, 2107, 2109, 2313 and Chapter 27, and to adopt §2317 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing home and community-based waiver

services for adult day health care (*Louisiana Register*, Volume 30, Number 9). The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amended the provisions governing the Adult Day Health Care (ADHC) Waiver Request for Services Registry to: 1) clarify procedures for the allocation of ADHC waiver opportunities; 2) amend the provisions governing the medical certification process to remove preadmission screening and annual resident review requirements; and 3) eliminate the use of the Title XIX Medical-Social Information Form (Form 90-L) (*Louisiana Register*, Volume 32, Number 12). The department promulgated an Emergency Rule to amend the September 20, 2004 Rule to: 1) redefine the target population; 2) establish provisions governing placement on the request for services registry; 3) clarify the comprehensive plan of care requirements; and 4) establish provider reporting requirements and admission and discharge criteria for the ADHC Waiver (*Louisiana Register*, Volume 33, Number 3). The department now proposes to amend the September 20, 2004 Rule to more precisely define the target population, establish explicit provisions governing placement on the request for services registry and admission and discharge criteria for the ADHC Waiver.

This action is being taken to avoid federal sanctions which may result from not having provisions to clearly define the ADHC target population and admission and discharge criteria. It is anticipated that implementation of this Emergency Rule will not have a fiscal impact in the Medicaid Program for state fiscal year 2006-2007.

Effective May 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends the provisions of the September 20, 2004 Rule governing the Adult Day Health Care Waiver program.

### Title 50

## **PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers**

### **Subpart 3. Adult Day Health Care**

#### **Chapter 21. General Provisions**

##### **§2101. Introduction**

A. These standards for participation specify the requirements of the Adult Day Health Care (ADHC) Waiver Program. The program is funded as a waiver service under the provisions of Title XIX of the Social Security Act and is administered by the Department of Health and Hospitals (DHH).

B. Waiver services are provided under the provisions of the approved waiver agreement between the Centers for Medicare and Medicaid Services (CMS) and the Louisiana Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

##### **§2103. Program Description**

A. An Adult Day Health Care (ADHC) Waiver program provides direct care for five or more hours in a 24-hour weekday to individuals who are physically and/or mentally impaired.



B. The target population for the ADHC Waiver Program is individuals who meet Medicaid financial eligibility requirements and nursing facility level of care requirements, and who are either receiving Medicaid-funded services in a nursing facility or at imminent risk of nursing facility placement.

1. A person is considered to be at imminent risk of nursing facility placement when he:

- a. is likely to require admission to a nursing facility within the next 120 days;
- b. faces a substantial possibility of deterioration in mental condition, physical condition or functioning if either home and community-based services or nursing facility services are not provided in within 120 days; or
- c. has a primary caregiver who has a disability or is over the age of 70.

2. These individuals must be 65 years old or older, or 22 to 64 years old and disabled according to Medicaid standards or the Social Security Administration's disability criteria.

C. This program expands the array of services available to functionally-impaired individuals and helps bridge the gap between independence and institutional care, allowing them to remain in their own homes and communities.

D. Goals

1. Adult Day Health Care programs work to:
  - a. promote the individual's maximum level of independence;
  - b. maintain the individual's present level of functioning as long as possible, preventing or delaying further deterioration;
  - c. restore and rehabilitate the individual to the highest possible level of functioning;
  - d. provide support and education for families and other caregivers;
  - e. foster socialization and peer interaction; and
  - f. serve as an integral part of the community services network and the long-term care continuum of services.

2. The long-range goal for all adult day health care participants is the delay or prevention of 24-hour care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

**§2107. Request for Services Registry**

A. The Department of Health and Hospitals is responsible for the Request for Services Registry, hereafter referred to as "the registry," for the Adult Day Health Care Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number which shall be maintained by the department.

B. Individuals who desire their name to be placed on the ADHC Waiver registry shall be screened to determine whether they meet nursing facility level of care and are at imminent risk of nursing facility placement. Only individuals who meet these criteria will be added to the registry.

C. Individuals currently on the ADHC Waiver registry will be screened to determine whether they meet nursing

facility level of care and are at imminent risk of nursing facility placement.

D. An individual who does not meet the criteria for placement on the registry may appeal the decision.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2256 (December 2006), LR 33:

**§2109. Programmatic Allocation of Waiver Opportunities**

A. When funding is appropriated for a new ADHC Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible ADHC Waiver opportunity assignment.

B. Adult Day Health Care Waiver opportunities shall be offered based upon the date of first request for services, with priority given to individuals who are in nursing facilities but could return to their home if ADHC Waiver services are provided. Priority shall also be given to those individuals who are at imminent risk of nursing facility placement.

1. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

C. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified and the process continues until an individual is determined eligible. An ADHC Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

**Chapter 23. Provider Participation**

**§2313. Comprehensive Plan of Care (CPOC)**

A. ...

B. Reimbursement shall not be made for ADHC Waiver services provided prior to the department's approval of the CPOC. Comprehensive plans of care must be completed and submitted timely in accordance with DHH policy and procedures.

C. The ADHC provider shall complete a CPOC which shall contain the type and number of services, including waiver and all other services, necessary to maintain the waiver recipient safely in the community.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

**§2317. Reporting Requirements**

A. ADHC facilities are obligated to report changes to the department that could affect the waiver recipient's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. ADHC facilities are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the recipient and completing an incident report. The incident report shall be submitted to the department with the specified requirements.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

## **Chapter 27. Admission and Discharge Criteria**

### **§2701. Admission Criteria**

A. Admission to the ADHC Waiver Program shall be determined in accordance with the following criteria:

1. initial and continued Medicaid financial eligibility;
2. initial and continued eligibility for a nursing facility level of care;
3. justification, as documented in the approved CPOC, that the ADHC Waiver services are appropriate, cost-effective and represent the least restrictive environment for the individual;
4. assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of ADHC Waiver services; and
5. the individual is either in a nursing facility or is at imminent risk of nursing facility placement.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in §2701.A. above will result in denial of admission to the ADHC Waiver.

C. - G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

### **§2703. Discharge Criteria**

A. The recipient shall be discharged from the ADHC Waiver Program if any of the following conditions are determined.

1. The individual does not meet the criteria for Medicaid financial eligibility.
2. The individual does not meet the criteria for a nursing facility level of care.
3. The recipient resides in another state or has a change of residence to another state.
4. The individual is admitted to an acute care hospital, rehabilitation hospital or a nursing facility with the intent to stay, or a stay that is longer than 90 consecutive days.
5. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing ADHC Waiver services during a period of 30 consecutive days.
6. The health, safety and welfare of the individual cannot be assured through the provision of ADHC Waiver services.
7. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.
8. It is not cost effective to serve the individual in the ADHC Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

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

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0705#085

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services**

Home and Community Based Services Waivers  
Elderly and Disabled Adult Waiver  
(LAC 50:XXI.Chapters 81 and 85)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services proposes to amend LAC 50:XXI.Chapters 81 and 85 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing home and community-based waiver services for elderly and disabled adults in LAC 50:XXI.Chapters 81-89 (*Louisiana Register*, Volume 30, Number 8). The Division of Long Term Supports and Services amended the provisions governing the Elderly and Disabled Adult (EDA) Waiver to: 1) eliminate the duplication of like services currently provided in the waiver and as a Medicaid State Plan service; 2) define the existing service package and establish new services; and 3) revise the methodology for allocation of waiver opportunities (*Louisiana Register*, Volume 32, Number 7). The department promulgated an Emergency Rule to amend the August 20, 2004 Rule to establish provisions governing placement on the request for services registry (*Louisiana Register*, Volume 33, Number 3). The department now proposes to amend the August 20, 2004 Rule to further clarify the provisions governing the EDA Waiver, including the provisions governing placement on the request for services registry, allocation of waiver opportunities and admission and discharge criteria.

This action is being taken to promote the well-being of Louisiana citizens by facilitating access to home and community-based services through the adoption of clear and precise provisions for the EDA Waiver request for services

registry and the allocation of waiver opportunities. It is anticipated that implementation of this Emergency Rule will not have a fiscal impact in the Medicaid Program for state fiscal year 2006-2007.

Effective May 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends the provisions of the August 20, 2004 Rule governing the Elderly and Disabled Adult Waiver program.

#### **Title 50**

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

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

### **Subpart 7. Elderly and Disabled Adults Waiver**

## **Chapter 81. General Provisions**

### **§8101. Introduction**

A. The target population for the Elderly and Disabled Adult (EDA) Waiver Program is individuals who meet Medicaid financial eligibility requirements and nursing facility level of care requirements, and who are either receiving Medicaid-funded services in a nursing facility or at imminent risk of nursing facility placement.

1. A person is considered to be at imminent risk of nursing facility placement when he:

- a. is likely to require admission to a nursing facility within the next 120 days;
- b. faces a substantial possibility of deterioration in mental or physical condition or functioning if either home and community-based services or nursing facility services are not provided within 120 days; or
- c. has a primary caregiver who has a disability or is over the age of 70.

2. These individuals must be 65 years old or older, or 21 to 64 years old and disabled according to Medicaid standards or the Social Security Administration's disability criteria.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1698 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

### **§8103. Request for Services Registry**

A. The Department of Health and Hospitals (DHH) is responsible for the Request for Services Registry, hereafter referred to as "the registry," for the Elderly and Disabled Adult Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number which shall be maintained by the department.

B. Individuals who desire their name to be placed on the EDA Waiver registry shall be screened to determine whether they meet nursing facility level of care and are at imminent risk of nursing facility placement. Only individuals who meet these criteria will be added to the registry.

C. Individuals currently on the EDA Waiver registry will be screened to determine whether they meet nursing facility level of care and are at imminent risk of nursing facility placement.

D. An individual who does not meet the criteria for placement on the registry may appeal the decision.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

### **§8105. Programmatic Allocation of Waiver Opportunities**

A. When funding is appropriated for a new EDA Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible EDA Waiver opportunity assignment.

B. EDA Waiver opportunities are offered based on the date of first request for services, with priority given to individuals who are in a nursing facility, but could return to their home if EDA Waiver services are provided. Priority shall also be given to those individuals who are at imminent risk of nursing facility placement.

1. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

C. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified as stated above and the process continues until an individual is determined eligible. An EDA Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

## **Chapter 85. Admission and Discharge Criteria**

### **§8501. Admission Criteria**

A. - A.5. ...

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in §8501.A. will result in denial of admission to the EDA Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

**§8503. Discharge Criteria**

A. The recipient shall be discharged from the EDA Waiver Program if any of the following conditions are determined.

1. The individual does not meet the criteria for Medicaid financial eligibility.
2. The individual does not meet the criteria for a nursing facility level of care.
3. The recipient resides in another state or has a change of residence to another state.
4. The individual is admitted to an acute care hospital, rehabilitation hospital or a nursing facility with the intent to stay, or a stay that is longer than 90 consecutive days.
5. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing EDA Waiver services during a period of 30 consecutive days.
6. The health, safety and welfare of the individual cannot be assured through the provision of EDA Waiver services within the individual's cost effectiveness.
7. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.
8. Failure on behalf of the individual to maintain a safe and legal home environment.
9. It is not cost effective to serve the individual in the EDA Waiver.
10. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

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

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, Louisiana 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0705#087

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of the Secretary  
Office of Aging and Adult Services**

Home and Community-Based Services Waivers  
Elderly and Disabled Adults Waiver  
Direct Support Professionals Wage Pass-Through  
(LAC 50:XXI.Chapter 91)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services adopts LAC 50:XXI.Chapter 91 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the Elderly and Disabled Adults (EDA) Waiver (*Louisiana Register*, Volume 28, Number 9). The bureau by Emergency Rule adopted a reimbursement methodology for the EDA Waiver and provisions to implement an hourly wage pass-through payment to providers for direct care staff (*Louisiana Register*, Volume 33, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. This action is being taken to promote the health and well-being of waiver recipients by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff.

Effective June 10, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services adopts the provisions governing the reimbursement methodology for the Elderly and Disabled Adults Waiver to implement a wage pass-through for direct support professionals.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part XXI. Home and Community Based Services  
Waivers**

**Subpart 7. Elderly and Disabled Adults Waiver  
Chapter 91. Reimbursement  
§9101. Reimbursement Methodology**

A. Reimbursement for EDA Waiver services shall be a prospective flat rate for each approved unit of service provided to the recipient.

B. Direct Support Professionals Wage Pass-Through

1. Effective February 9, 2007, an hourly wage pass-through payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide home and community-based waiver services to Medicaid recipients. Direct support professionals are persons who deliver direct care services such as assistance with the activities of daily living.

a. At least 75 percent of the wage pass-through shall be paid to the direct support professionals as wages. If less than 100 percent of the pass-through is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. The minimum hourly rate paid to direct support professionals shall be the current minimum wage plus 75 percent of the wage pass through.

2. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

a. gross wage paid to the direct support professional(s);

b. total number of direct support hours worked; and

c. the amount paid in employee benefits.

3. A separate report shall be submitted for paid overtime.

4. The provider shall submit quarterly wage reports that verify that the 75 percent wage pass-through has been paid to the appropriate staff.

5. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage pass-through.

6. Audit procedures shall be established by the department to verify the wage-pass through payments reimbursed to providers.

7. Noncompliance or failure to demonstrate that the wage pass-through was paid directly to direct support professionals may result in:

a. forfeiture of eligibility for wage pass-through payments;

b. recoupment of previous wage pass-through payments;

c. Medicaid fraud charges; and

d. loss of provider license.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

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

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, Louisiana 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0705#092

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services

#### Personal Care Services—Long Term Personal Care Workers Wage Pass-Through (LAC 50:XV.12917)

The Department of Health and Hospitals, Office of the Secretary, Office Of Aging and Adult Services amends LAC 50:XV.12917 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the coverage of personal care services as an optional service under the Medicaid State Plan (*Louisiana Register*, Volume 29, Number 6). The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services by Emergency Rule amended the provisions of the June 20, 2003 Rule governing the reimbursement methodology for personal care services to implement an hourly wage pass-through payment to providers for personal care workers. This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. This action is being taken to promote the health and well-being of Medicaid recipients by assuring continued access to services through assisting providers to recruit and retain sufficient personal care workers.

Effective June 10, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for personal care services to implement a wage pass-through payment to providers for personal care workers.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

#### Subpart 9. Personal Care Services

#### Chapter 129. Long Term Care

#### §12917. Reimbursement Methodology

A. ...

B. Personal Care Workers Wage Pass-Through

1. Effective February 9, 2007, an hourly wage pass-through payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) personal care workers who provide services to Medicaid recipients.

a. At least 75 percent of the wage pass-through shall be paid to personal care workers as wages. If less than 100 percent of the pass-through is paid in wages, the

remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. The minimum hourly rate paid to personal care workers shall be the current minimum wage plus 75 percent of the wage pass-through.

2. Providers shall be required to submit a certified wage register to the department verifying the personal care workers' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the personal care worker(s);
- b. total number of personal care hours worked; and
- c. the amount paid in employee benefits.

3. A separate report shall be submitted for paid overtime.

4. The provider shall submit quarterly wage reports that verify that the 75 percent wage pass-through has been paid to the appropriate staff.

5. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage pass-through.

6. Audit procedures shall be established by the department to verify the wage-pass through payments reimbursed to providers.

7. Noncompliance or failure to demonstrate that the wage pass-through was paid directly to personal care workers may result in:

- a. forfeiture of eligibility for wage pass-through payments;
- b. recoupment of previous wage pass-through payments;
- c. Medicaid fraud charges; and
- d. loss of provider license.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

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

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

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

0705#095

## DECLARATION OF EMERGENCY

### Department of Insurance Office of the Commissioner

#### Rule 22—Alternative Procedures for the Resolution of Disputed Residential Insurance Claims Arising from Hurricane Damage (LAC 37:XI.Chapter 41)

The Department of Insurance (department) hereby states that the following circumstances continue to constitute an immediate danger to the public health, safety, or welfare. The 2005 hurricane season was particularly destructive for Louisiana. Hurricane Katrina caused catastrophic damage in southeast and central Louisiana; particularly hard were Plaquemines, St. Bernard and Orleans Parishes. Katrina caused widespread major damage to homes, loss of personal belongings and corresponding temporary loss of employment.

On September 24, 2005, Hurricane Rita hit the Cameron Parish area of Louisiana's southwest coast causing extensive and wide spread damage. The Governor of Louisiana declared a state of emergency (Proclamation No. 48 KBB 2005 and Proclamation No. 53 KBB 2005) due to the effects of Hurricanes Katrina and Rita, respectively. The President of the United States declared designated parishes of Louisiana a federal disaster area by issuing FEMA-1603-DR and FEMA-1607-DR for Katrina and Rita, respectively.

The total cost of property losses resulting from the combination of storms has been estimated to be in the tens of billions of dollars. The initial issuance of this Emergency Rule, in January 2006 (*Louisiana Register*, January 2006, Volume 32, page 60) complied with Code Title XIX—Alternative Dispute Resolution, particularly Chapter 1, The Louisiana Mediation Act, R.S. 9:4101 et seq., and implemented a non-adversarial alternative dispute resolution procedure. The facilitated claim resolution conference was prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damage to residential property caused by these two hurricanes.

Since the program's inception more than 10,800 Louisiana homeowners have requested to have their property claim mediated, with an overall settlement rate in excess of 75 percent. Despite this success, now almost 20 months after the hurricanes it is estimated that several thousands of residential property claims remain unresolved and repairs to damaged property has not been completed. Many of these claims remain unresolved as a result of disputes regarding costs of labor and materials needed to effectuate repairs. Due to the unprecedented extent of damage, in many instances materials and labor necessary to effectuate repairs have not been readily available and there have been disparities between the estimates of insurers and repair contractors.

Insureds with unresolved claims and un-repaired residences continue to be exposed to emotional, physical and economic hardship and remain at risk. Insureds are at risk of

receiving sub-quality work, or being faced with a substantial disparity between repair estimates and customary costs in the area. This condition erodes the ability of insureds to realize the benefit of their insurance coverage. This Rule establishes a procedure to determine a construction pricing guideline to be used in mediation proceedings to determine reasonable payments for repair and replacement costs arising from damage caused by hurricanes Katrina and Rita.

Due to decisive action by the Louisiana Legislature, the apparent one year prescriptive period for claims of these types (R.S. 22:691) has been extended to two years. Continuation of the program at this time will provide homeowners the opportunity and a forum to resolve their claims without having to file suit.

Based upon the forgoing, the department has determined that an emergency continues to exist and continuation of the claims mediation program and the availability of guidelines for construction pricing are essential to the resolution of insurance claims and the effectuation of repairs of damage covered by insurance policies.

Summary of the Rule: this Emergency Rule establishes a special mediation program for personal lines residential insurance claims resulting from Hurricanes Katrina and Rita. The rule, effective April 25, 2007, creates procedures for notice of the right to mediation, request for mediation, assignment of mediators, payment for mediation, conduct of mediation, and guidelines for the quality repair of residential property damage.

The person to be contacted regarding the Emergency Rule is Barry E. Ward, Senior Attorney, Division of Legal Services, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9412; 225-219-4750.

#### **Title 37**

### **INSURANCE**

#### **Part XI. Rules**

#### **Chapter 41. Rule 22—Alternative Procedures for the Resolution of Disputed Residential Insurance Claims Arising from Hurricane Damage: Specific Reasons for Finding an Immediate Danger to the Public Health, Safety or Welfare**

##### **§4101. Authority**

A. This Emergency Rule is promulgated by the Commissioner of Insurance pursuant to authority granted under the Louisiana Insurance Code, Title 22; R.S. 22:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

##### **§4103. Purpose and Scope**

A. This Emergency Rule in compliance with the Louisiana Mediation Act, R.S. 9:4101 et seq., sets forth a non-adversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damages to residential property caused by Hurricanes Katrina and Rita.

B. This Emergency Rule also addresses guidelines for the quality repair of residential property damaged by Hurricanes Katrina and Rita at reasonable and fair prices.

C. Before resorting to these procedures, insureds and insurers are encouraged to resolve claims as quickly and fairly as possible.

D. The procedure established by this Emergency Rule is available to all first party claimants who have personal lines claims resulting from damage to residential property occurring in the state of Louisiana. This rule does not apply to commercial insurance, private passenger motor vehicle insurance or to liability coverage contained in property insurance policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

##### **§4105. Definitions**

A. The following definitions apply to the terms of this rule as used herein.

*Administrator*—the department or its designee (American Arbitration Association) and the term is used interchangeably with regard to the department's duties under this rule.

*Claim*—any matter on which there is a dispute or for which the insurer has denied payment pursuant to claims arising from Hurricanes Katrina and Rita only. Unless the parties agree to mediate a claim involving a lesser amount, a "claim" involves the insured requesting \$500 or more to settle the dispute, or the difference between the positions of the parties is \$500 or more. "Claim" does not include a dispute with respect to which the insurer has reported allegations of fraud, based on an investigation by the insurer's special investigative unit, to the department's Division of Insurance Fraud.

*Department*—the Department of Insurance or its designee. Reporting to the department shall be directed to: Department of Insurance, Mediation Section, P.O. Box 94214, Baton Rouge, LA, 70804-9214; or by facsimile to (225) 342-1632.

*Mediator*—an individual approved by the administrator to mediate disputes pursuant to this rule. In order to be approved, mediators must appear on the "approved register" of mediators maintained by the Alternative Dispute Resolution (ADR) section of the Louisiana State Bar Association pursuant to R.S. 9:4105, or provide sufficient evidence of having completed the mandatory qualifications set forth in R.S. 9:4106.

*Party or Parties*—the insured and his or her insurer, including Citizens Property Insurance Corporation, when applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

##### **§4107. Notification of Right to Mediate**

A. Insurers shall notify each of their insureds in this state, who has claimed damage to their residential property as a result of either Hurricane Katrina or Hurricane Rita, of their right to mediate the claim settlement. This requirement applies to all claims including any and all instances where checks have been issued by the insurer to the homeowner.

B. The insurer shall mail a notice of the right to mediate disputed claims to the insured within five days of the time

the policyholder or the administrator notifies an insurer of a dispute regarding the policyholder's claim. The following shall apply.

1. If the insurer has not been notified of a disputed claim prior to the time an insurer notifies the insured that a claim has been denied in whole or in part, the insurer shall mail a notice of the right to mediate disputed claims to the insured in the same mailing as a notice of denial.

2. The insurer is not required to send a notice of the right to mediate disputed claims if a claim is denied because the amount of the claim is less than the policyholder's deductible.

3. The mailing that contains the notice of the right to mediate may include the department's consumer brochure on mediation.

4. Notification shall be in writing and shall be legible, conspicuous, and printed in at least 12-point type.

5. The first paragraph of the notice shall contain the following statement:

"James J. Donelon, Commissioner of Insurance for the State of Louisiana, has adopted an Emergency Rule to facilitate fair and timely handling of residential property insurance claims arising out of Hurricanes Katrina and Rita that recently devastated so many homes in Louisiana. The Emergency Rule gives you the right to attend a mediation conference with your insurer in order to settle any dispute you have with your insurer about your claim. You can start the mediation process by calling the mediation administrator, the American Arbitration Association (AAA), at 1-800-426-8792. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference."

C. The notice shall also:

1. include detailed instructions on how the insured is to request mediation, including name, address, and phone and fax numbers for requesting mediation through the administrator;

2. include the insurer's address and phone number for requesting additional information; and

3. state that the administrator will select the mediator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

#### **§4109. Request for Mediation**

A. An insured may request mediation by contacting the insurer or by writing to the American Arbitration Association, Mediation Section, 1100 Poydras Street, Suite 2725, New Orleans, LA 70163; by calling the administrator at 1-800-426-8792; or by faxing a request to the administrator at (504) 561-8041.

B. If an insured requests mediation prior to receipt of the notice of the right to mediation or if the date of the notice cannot be established, the insurer shall be notified by the administrator of the existence of the dispute prior to the administrator processing the insured's request for mediation.

C. If an insurer receives a request for mediation, the insurer shall fax the request to the mediation administrator within three business days of receipt of the request. Should the department receive any requests, it will forward those requests to the administrator within three business days following the receipt. The administrator shall notify the insurer within 48 hours of receipt of requests filed with the department. The insured should provide the following information if known:

1. name, address, and daytime telephone number of the insured and location of the property if different from the address given;

2. the claim and policy number for the insured;

3. a brief description of the nature of the dispute;

4. the name of the insurer and the name, address, and phone number of the contact person for scheduling mediation;

5. information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

#### **§4111. Mediation Costs**

A. All mediation costs shall be borne by the insurer shall be \$350 regardless of where the property is located.

B. Within five days of receipt of the request for mediation from the insured or receipt of notice of the request from the department or immediately after receipt of notice from the administrator pursuant to §4109 that mediation has been requested, whichever occurs first, the insurer shall pay a non-refundable administrative fee, not to exceed \$100 as determined by the department, to the administrator to defer the expenses of the administrator and the department.

1. The insurer shall pay \$250 to the administrator for the mediator's fee not later than five days prior to the date scheduled for the mediation conference.

2. If the mediation is cancelled for any reason more than 72 hours prior to the scheduled mediation time and date, the insurer shall pay \$75 to the administrator for the mediator's fee instead of \$250.

3. No part of the fee for the mediator shall be refunded to the insurer if the conference is cancelled within 72 hours of the scheduled time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

#### **§4113. Scheduling of Mediation**

A. The administrator will select a mediator and schedule the mediation conference. The administrator will attempt to facilitate reduced travel and expense to the parties and the mediator when selecting a mediator and scheduling the mediation conference. The administrator shall confer with the mediator and all parties prior to scheduling a mediation conference. The administrator shall notify each party in writing of the date, time and place of the mediation conference at least 10 days prior to the date of the conference and concurrently send a copy of the notice to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

#### **§4115. Conduct of the Mediation Conference**

A. R.S. 9:4101.C.(4) provides *mediation* is a procedure in which a mediator facilitates communication between the parties concerning the matters in dispute and explores possible solutions to promote reconciliation, understanding, and settlement. As such, it is not necessary to involve a



private attorney and participation by private attorneys is discouraged by the department. However:

1. if the insured elects to have an attorney participate in the conference, the insured shall provide the name of the attorney to the administrator at least six days before the date of the conference;

2. parties and their representatives must conduct themselves in the cooperative spirit of the intent of the law and this rule;

3. parties and their representatives must refrain from turning the conference into an adversarial process;

4. both parties must negotiate in good faith. A decision by an insurer to stand by a coverage determination shall not be considered a failure to negotiate in good faith. A party will be determined to have not negotiated in good faith if the party or a person participating on the party's behalf, continuously disrupts, becomes unduly argumentative or adversarial, or otherwise inhibits the negotiations as determined by the mediator;

5. the mediator shall terminate the conference if the mediator determines that either party is not negotiating in good faith, either party is unable or unwilling to participate meaningfully in the process, or upon mutual agreement of the parties;

6. the party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.

B. Upon request of the insured or the mediator, an attorney will be available to help insureds prepare for the mediation conferences. A representative of the department will be present at and participate in the conference if requested at least five days prior to the scheduled mediation by a party or the mediator to offer guidance and assistance to the parties. The department will attempt to have a representative at the conference if the request is received less than five days prior to the scheduled mediation. Representatives of the department that participate in the conference will not be there to represent the insured. They shall not assume an advocacy role but shall be available to provide legal and technical insurance information.

C. The representative of the insurer attending the conference must bring a copy of the policy and the entire claims file to the conference.

1. The representative of the insurer attending the conference must know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy.

2. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full amount of the claim or lacks the ability to disburse the settlement amount at the conclusion of the conference.

D. The mediator will be in charge of the conference and will establish and describe the procedures to be followed. Per R.S. 9:4107, mediators shall conduct the conference in accordance with the standards of professional conduct for mediation adopted by the American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.

1. Each party will be given an opportunity to present their side of the controversy. In so doing, parties may utilize any relevant documents and may bring any individuals with knowledge of the issues, such as adjusters, appraisers, or contractors, to address the mediator.

2. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement.

3. All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation. The provisions of R.S. 9:4112 apply.

E. A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the administrator if the grounds are known prior to the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

F. If the insured fails to appear, without good cause as determined by the administrator, the insured may have the conference rescheduled only upon the insured's payment of the mediation fees for the rescheduled conference. If the insurer fails to appear at the conference, without good cause as determined by the administrator, the insurer shall pay the insured's actual expenses incurred in attending the conference and shall pay the mediator's fee whether or not good cause exists.

1. Failure of a party to arrive at the mediation conference within 30 minutes of the conference's starting time shall be considered a failure to appear.

2. Good cause shall consist of severe illness, injury, or other emergency which could not be controlled by the insured or the insurer and, with respect to an insurer, could not reasonably be remedied prior to the conference by providing a replacement representative or otherwise.

3. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the insurer shall be subject to penalty, including suspension, revocation, or fine for violating R.S. 22:1214(14)(b), (c), (f), et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

#### **§4117. Guidelines for the Quality Repair of Residential Property at a Reasonable and Fair Price**

A. The provisions of insurance policies and applicable statutes require claims payments made by insurers to be sufficient to effectuate required repairs at the property site. Further, misrepresentation by any person regarding the cost of repairs is prohibited.

B. Based upon information provided by the construction industry, the insurance industry and nationally recognized sources, companies such as Simsol, Inc. and Xactware, Inc., compile construction pricing guidelines used in adjusting property losses. These guidelines reflect data from both the construction and insurance industries and the ranges take into consideration price differentials between geographic areas of the state. The parties shall use the current construction pricing guidelines compiled by these or similar reputable sources as the starting point in the dispute resolution process.

C. The guidelines referred to herein do not apply to any portion of repairs necessary to fulfill the insurer's contractual obligation to restore the insured residence to pre-hurricane

condition where, as of the effective date of this rule, there is an executed repair contract to effectuate such repairs for an agreed price and the insurer has tendered full payment for the repair contract amount for those repairs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

#### **§4119. Post Mediation**

A. Within five days of the conclusion of the conference the mediator shall file with the administrator a mediator's status report on Form DOI-HM-1 which is entitled *Disposition of Property Insurance Mediation Conference*, indicating whether or not the parties reached a settlement. Form DOI-HM-1 will be available from the administrator and is hereby incorporated in this rule by reference.

1. Mediation is non-binding unless all the parties specifically agree otherwise in writing.

2. If the parties reached a settlement, the mediator shall include a copy of the settlement agreement with the status report.

3. However, if a settlement is reached, the insured shall have three business days within which he or she may rescind any settlement agreement provided that the insured has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the conference.

B. If a settlement agreement is reached and is not rescinded, it shall act as a release of all specific claims that were presented in the conference. Any additional claims under the policy shall be presented a separate claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

#### **§4121. Non-Participation in Mediation Program**

A. If the insured decides not to participate in this claim resolution process or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insured's insurance policy, by litigation, or by any other dispute resolution procedure available under Louisiana law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

#### **§4123. Departmental Authority to Designate**

A. The department is authorized to designate an entity or person as its administrator to carry out any of the department's duties under this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

#### **§4125. Severability**

A. If a court holds any Section or portion of a Section of this Emergency Rule or the applicability thereof to any person or circumstance invalid, the remainder of the Emergency Rule shall not be affected thereby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

#### **§4127. Applicable Provisions**

A. The applicable provisions of Title 49, Louisiana Administrative Procedure Act, shall govern issues relating to mediation that are not addressed in this rule. The provisions of this Emergency Rule shall govern in the event of any conflict with the provisions of Title 49, Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

James J. Donelon  
Commissioner

0705#012

### **DECLARATION OF EMERGENCY**

#### **Department of Public Safety and Corrections State Uniform Construction Code Council**

Classifications and Required Certifications for Municipal or Parish Building Code Enforcement Officers  
(LAC 55.VI.703)

The Louisiana Department of Public Safety and Corrections, Louisiana State Uniform Construction Code Council hereby adopts the following Emergency Rule governing the implementation of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730.21 et seq. This Rule is being adopted in accordance with the Emergency Rule provisions of R.S. 49:953(B) of the Administrative Procedure Act. This Emergency Rule becomes effective on the date of the signature by the authorized representative of the Louisiana State Uniform Construction Council, April 10, 2007, and shall remain in effect for the maximum period allowed by the APA, which is 120 days.

As a result of the widespread damage caused by Hurricanes Rita and Katrina, the Legislature enacted and mandated a state uniform construction code to promote public safety and building integrity. This new code went into effect statewide on January 1, 2007. The Louisiana State Uniform Construction Code Council ("Council") promulgated rules in order to help clarify the building code officer registration process and the qualifications of such individuals. The council instituted, in the regular rulemaking process, a Rule pertaining to the qualifications for building code enforcement officers to register with the council on a provisional basis. However, it has since been discovered that there are additional certifications that individuals may hold but were not included in the original Rule. Immediately adopting this Rule will greatly improve the facilitation of the intent of this legislation in mandating a statewide uniform construction code in allowing building code enforcement officers to obtain their certificate of registration from the council.

**Title 55**

**PUBLIC SAFETY**

**Part VI. Uniform Construction Code**

**Chapter 7. Certificates of Registration**

**§703. Classifications and Required Certifications for Municipal or Parish Building Code Enforcement Officers**

A. - B. ...

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C. BCEO Registration Classifications/Requirements.

1. - 1.a. ...

2. Specialty Classifications

a. Commercial Inspectors

i. Commercial Building Inspector

Requirements—possess a current ICC Commercial Building Inspector, ICC Building Inspector, or ICC Commercial Combination Inspector certificate.

ii. Commercial Electrical Inspector

Requirements—possess a current ICC Commercial Electrical Inspector, ICC Electrical Inspector, or ICC Commercial Combination Inspector certificate.

iii. Commercial Mechanical Inspector

Requirements—possess a current ICC Commercial Mechanical Inspector, ICC Mechanical Inspector, or ICC Commercial Combination Inspector certificate.

iv. Commercial Plumbing Inspector

Requirement—possess a current ICC Commercial Plumbing Inspector, ICC Plumbing Inspector, or ICC Commercial Combination Inspector certificate.

b. - b.v. ...

c. Residential Inspectors

i. Residential Building Inspector

Requirements—possess a current ICC Residential Inspector, ICC Building Inspector, or ICC Residential Combination Inspector certificate.

ii. Residential Electrical Inspector

Requirements—possess a current ICC Residential Electrical Inspector, ICC Electrical Inspector, or ICC Residential Combination Inspector certificate.

iii. Residential Mechanical Inspector

Requirements—possess a current ICC Residential Mechanical Inspector, ICC Mechanical Inspector, or ICC Residential Combination Inspector certificate.

iv. Residential Plumbing Inspector

Requirements—possess a current ICC Residential Plumbing Inspector, ICC Plumbing Inspector, or ICC Residential Combination Inspector certificate.

v ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.34(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:292 (February 2007), amended LR 33:

Jill P Boudreaux  
Undersecretary

0705#002

**DECLARATION OF EMERGENCY**

**Department of Public Safety and Corrections  
State Uniform Construction Code Council**

Commercial Plan Review  
(LAC 55:VI.505)

The Louisiana Department of Public Safety and Corrections, Louisiana State Uniform Construction Code Council hereby adopts the following Emergency Rule governing the implementation of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730.21 et seq. This Rule is being adopted in accordance with the Emergency Rule provisions of R.S. 49:953(B) of the Administrative Procedure Act. This Emergency Rule becomes effective on the date of the signature, April 12, 2007, by the authorized representative of the Louisiana State Uniform Construction Council and shall remain in effect for the maximum period allowed by the APA, which is 120 days.

As a result of the widespread damage caused by Hurricanes Rita and Katrina, the legislature enacted and mandated a state uniform construction code to promote public safety and building integrity. This new code went into effect statewide on January 1, 2007. The Louisiana State Uniform Construction Code Council ("Council") promulgated rules in order to help clarify the qualifications of code enforcement officers and who can obtain code enforcement by a third party provider. The council instituted, in the regular rulemaking process, a rule pertaining to who can provide code enforcement services. Currently the jurisdiction must provide code enforcement services or contract with a third party to provide these services. Another option allows licensed contractors to obtain third party provider review. Immediately adopting this Rule will greatly improve the facilitation of the intent of this legislation in mandating a statewide uniform construction code in allowing the Office of the State Fire Marshal to provide architects, engineers, owners, parishes or municipalities with commercial plan review.

**Title 55**

**PUBLIC SAFETY**

**Part VI. Uniform Construction Code**

**Chapter 5. Enforcement of the Louisiana State Uniform Construction Code**

**§505. Commercial Plan Review**

A. Until December 31, 2007, where a parish or municipality is not providing plan review, then architects, engineers, owners, parishes or municipalities on commercial projects may request International Building Code plan review by the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Uniform Construction Code Council LR 33:

Jill Boudreaux  
Acting Undersecretary

0705#006

## DECLARATION OF EMERGENCY

### Department of Public Safety and Corrections State Uniform Construction Council

Third Party Providers (LAC 55:VI.905)

The Louisiana Department of Public Safety and Corrections, Louisiana State Uniform Construction Code Council hereby adopts the following Emergency Rule governing the implementation of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730.21 et seq. This Rule is being adopted in accordance with the Emergency Rule provisions of R.S. 49:953(B) of the Administrative Procedure Act. This Emergency Rule becomes effective on the date of the signature by the authorized representative of the Louisiana State Uniform Construction Council, April 10, 2007, and shall remain in effect for the maximum period allowed by the APA, which is 120 days.

As a result of the widespread damage caused by Hurricanes Rita and Katrina, the Legislature enacted and mandated a state uniform construction code to promote public safety and building integrity. This new code went into effect statewide on January 1, 2007. The Louisiana State Uniform Construction Code Council ("Council") promulgated rules in order to help clarify the building code officer registration process and the provisional registration periods for code enforcement officers. The council instituted, in the regular rulemaking process, a Rule pertaining to the qualifications for third party providers to register with the council on a provisional basis, however, the House Commerce Committee rejected that particular Rule which resulted in no Rule currently being in place. Furthermore, the council previously enacted an Emergency Rule on this particular issue, however it was subsequently discovered that the previous Emergency Rule caused undue hardship on certain jurisdictions. Immediately adopting this Rule will greatly improve the facilitation of the intent of this legislation in mandating a statewide uniform construction code in allowing third party providers to provisionally register with the council. This Emergency Rule will supercede the previous Emergency Rule.

#### Title 55

#### PUBLIC SAFETY

#### Part VI. Uniform Construction Code

#### Chapter 9. Temporary Exemption to Certification Requirement

#### §905. Third Party Providers

A. Third party providers who are Louisiana licensed architects or engineers and who obtain a certificate of registration after January 1, 2007, shall be granted a provisional certificate for registration without certification by a recognized code organization. This provisional certificate shall expire on December 31, 2007. Thereafter, any third party provider renewing this certification of registration shall satisfy the certification requirement(s) as set forth in §703.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

Jill P. Boudreaux  
Undersecretary

0705#003

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

Child Care Quality Rating System (LAC 67:III.Chapter 59)

Editor's Note: This Emergency Rule is being printed according to R.S. 49:954.1(C) which directs the Office of the State Register to publish documents submitted by a rulemaking agency without regard to validity. This Emergency Rule was not submitted in accordance with R.S. 49:950 et seq.

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:III Subpart 18, Chapter 59, Child Care Quality Rating System effective January 1, 2007, pursuant to the authority granted to the department by the Child Care and Development Fund (CCDF). This Rule shall remain in effect for a period of 120 days.

As a result of the devastation resulting from Hurricanes Katrina and Rita, child care centers in Louisiana have struggled to rebuild in affected areas and in other parts of the state have expanded their capacity to serve displaced families. In an effort to guide these centers as they restore much critically needed child care services, the agency has established a quality rating system for child care centers which uses licensing as a foundation and sets a continuum of quality indicators focused on the social-emotional needs of children. The Quality Rating System provides a mechanism by which child care centers can be assessed regarding the level of quality care given. The agency is strongly focused on providing quality child care and plans to implement the Quality Rating System through the emergency rulemaking process. The implementation of a Quality Rating System will provide a guide for parents to choose higher settings of child care beyond basic licensure and offers a structure for child care centers to communicate the level of quality offered in their center.

Subpart 18, Chapter 59 is being adopted to address the Child Care Quality Rating System which will assess, improve, and communicate the level of quality in early care and education settings.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Family Support

#### Subpart 18. Child Care Quality Rating System

#### Chapter 59. Child Care Quality Rating System

#### Subchapter A. Authority

#### §5901. Authority

A. Child Care Quality Rating System is established effective January 1, 2007, and administered under the authority of state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

**§5903. Definitions**

*Assistant Directors*—must be on site for a minimum of 20 hours per week for centers with an enrollment of 101 or more.

*Assistant Teachers*—care for children at least 16 or more hours per week and must meet assistant teacher qualifications.

*Child Care Center*—licensed day care center.

*Child Care Resource and Ferral (CCR and R)*—local agencies providing services to families, early childhood professionals and communities statewide.

*Child Development Associate (CDA) Credential*—a nationally recognized credential which can be used to meet staff qualification requirements.

*College Transcripts*—official record of coursework issued by institutions of higher learning.

*Director*—an administrator who meets the director qualifications and is on-site a minimum of 30 hours per week. This requirement can be met by having one or more persons on site who meet these qualifications.

*Early Childhood Degree*—may include human ecology, child development, or family studies.

*Early Childhood Environment Rating Scale (revised ECERS-R)*—a research-based assessment tool that measures environment indicators of quality in preschool classrooms.

*Environment Rating Scales (ERS)*—the assessment tools that measure environmental indicators of quality. They include the Infant Toddler Environment Rating Scale-Revised and ECERS-R, as well as the School Age Child Care Environment Rating Scale (SACCERS) for school age programs, and the Family Day Care Environment Rating Scale (FDCERS) for family child care homes.

*Group*—those children who are assigned for most of the day to a specific teacher and who occupy an individual classroom or well defined space that prevents intermingling of children from different groups within a larger group or area.

*Infant Toddler Environment Rating Scale-Revised (ITERS-R)*—a research-based assessment tool that measures environment indicators of quality in preschool classrooms.

*Lead Teacher*—a teacher who has primary responsibility for a designated classroom, planning and supervision and spends at least 25 hours a week in that classroom. All classrooms must have a lead teacher.

*Quality Rating System (QRS) Points*—points given in the Program and Staff Qualifications areas and all items within a point must be verified to receive credit. The total points earned determine the star award.

*Social Emotional Subscales of the Environment Rating Scales*—subscales used to determine the ERS score for Points 1-4. In the ECERS, the Language-Reasoning, Interaction and Program Structure are used and in the ITERS, the Listening and Talking, Interaction and Program Structure.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

**§5905. Quality Rating System Requirements**

A. The Child Care Quality Rating System (QRS) is designed to assess levels of child care, support improvements of child care programs, and communicate the level of quality in early care and education programs. The QRS consists of five star rating levels that can be earned by a licensed child care center, uses licensing as the foundation and has 4 star levels above Louisiana's licensing standards. The system components (Administrative Practices, Family and Community Involvement, Program and Staff Qualifications) have indicators that must be achieved to earn the star level.

1. Foundation One Star Level. A child care center shall have a license to operate and comply with standards as defined in Louisiana Administrative Code, Title 48, Chapter 53, Sections 5301-5354 and meet all the requirements in each of the four component areas, a selection of which is listed below.

a. Administration Practices—written center policies and procedures including:

- i. center's policies and practices;
- ii. emergency and evacuation procedures;
- iii. admission policy;
- iv. daily schedule;
- v. complaint procedure;
- vi. open door policy;
- vii. non-discrimination policy;
- viii. abuse/neglect policy;
- ix. discipline policy;
- x. job description;
- xi. quarterly staff session/meeting.

b. Family and Community Involvement—parent consultation prior to enrollment.

- i. Director makes the center's policies and procedures available to the parent.
- ii. Parent permitted to visit the center anytime during regular hours as long as child is enrolled.

c. Program Ratios

0-12 months	1:5
1 yr	1:7
2 yrs	1:11
3 yrs	1:13
4 yrs	1:15
5 yrs	1:19
6 yrs up	1:23
Other requirements in regulations.	

d. Staff Qualifications

- i. Director—
  - (a). on-site full-time director who is 21 yrs old;
  - (b). meet director qualifications in Louisiana Administrative Code, Title 48, Chapter 53.
- ii. Teacher—
  - (a). 18 yrs or older;
  - (b). within 1 week of employment, staff receive orientation with content as specified, followed by 4 days of supervised work with children;
  - (c). complete required annual clock hours of approved training;
  - (d). meet staff qualifications as identified in LAC 48:Chapter 53.

2. Foundation Two Star Level. A child care center must meet all the standards for a Foundation Star One, have been in operation for six months, and meet the following.

- a. Administrative Practices—
  - i. written personnel policies including operational hours, dress code, use of telephone, and schedule;
  - ii. job descriptions that include list of qualifications on file and provided to all staff;
  - iii. provide 1 staff benefit from the list of options below for all full time staff. Staff benefits options:
    - (a). employee health insurance or comparable health benefits;
    - (b). paid annual leave;
    - (c). paid sick leave;
    - (d). paid holidays, child care benefit/discount;
    - (e). bonus based on merit/achievement or education;
    - (f). retirement compensation;
    - (g). annual increments based on merit;
    - (h). tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes;
    - (i). differential shift pay, flextime, pay professional association fee.
- b. Family and Community Involvement—
  - i. parent provided pre-enrollment visit and center tour;
  - ii. give every parent enrolling a child, a list of community resources including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, food stamps and information on a child’s medical home.
- c. Program—
  - i. make 4 of the following activity areas available daily:
    - (a). art and creative play;
    - (b). children's books;
    - (c). blocks and block building;
    - (d). manipulatives; and
    - (e). family living and dramatic play;
  - ii. complete a self assessment of program and develop an improvement plan.
- d.i. Staff Qualifications—directors and teachers join the Louisiana Pathways Child Care Career Development System Registry. Director attends 3 hours of ERS training.
  - (a). Director (on-site)—
    - (i). three semester hour credits in care of young children or child development<sup>2</sup>; and
    - (ii). three semester hour credits in administration<sup>3</sup>; and
    - (iii). one year experience in teaching young children in an early childhood program.
  - (b). Assistant Director—three semester hour credits in care of young children or child development<sup>2</sup>.
  - (c). Teacher—75 percent of lead teachers must meet one of the following:
    - (i). complete a three semester hour credits course in care of young children or child development<sup>2</sup> from a list of approved courses or enroll in the course and complete within 1 year of employment.

ii. Staff Qualifications

- (a). Director. An administrator who meets the director qualifications and is on-site a minimum of 30 hours per week. This requirement can be met by having one or more persons on site who meet these qualifications.
- (b). Assistant Directors. For centers with an enrollment of 101 or more, there must be a second director on site for a minimum of 20 hours per week.
- (c). Teacher. A Lead Teacher is a teacher who has primary responsibility for a designated classroom, planning and supervision and spends at least 25 hours a week in that classroom. All classrooms must have a lead teacher. All other staff who care for children at least 16 or more hours per week are designated as Assistant Teachers and must meet assistant teacher staff qualifications.

<sup>2</sup>The following may be substituted to meet this requirement of 3 semester hour credits in the care of young children or child development: a CDA or have approved high school child development courses or have 5 years full-time experience in an early childhood program or have completed a Level V LA Pathways Child Care Classroom Certificate. The following may be used to meet the requirement of up to 6 semester hour credits in the care of young children or child development: CDA or have completed a Level VI LA Pathways Child Care Classroom Certificate. An individual may use the above substitutions to meet the requirements for a maximum of 6 semester hour credits.

<sup>3</sup>The following may be substituted to meet the requirement for 3 semester hour credits in administration: LA Pathways Administrator Certificate or National Administrator Credential (NAC) or 3 years experience in administration or a combination of 1 year in administration experience and 4 years in teaching young children in an early childhood program.

NOTE: For Director Qualification: Experience in teaching young children or administration may only be substituted one time. At the next QRS review, the necessary educational requirement (credits in the care of young children or child development or credits in administration) must be met.

3. Point Standards for child care centers seeking Three Star Level, Four Star Level, and Five Star Level Ratings. To achieve a higher level of rating, a program must maintain all requirements at the Foundation Two Star level and earn points in the Program and Staff Qualifications component areas by meeting the requirements listed below. At least one point must be earned in each component area, Staff Qualifications and Program. The Quality Point referenced in Subparagraph 3.c may also be earned. The total number of points will determine the Star Level rating awarded to the center.

Total Number of Points	Star Level Rating
3-5 points	Three Stars
6-9 points	Four Stars
10-11 points	Five Stars

a. Program Standards

Points	Criteria
1	An average of 3.75 on the designated social-emotional subscale of the Environment Rating Scales (ERS) 4, with no one classroom score lower than 3.0 on the subscale.
2	An average of 4.0 on the designated social-emotional subscale of the ERS, with no one classroom score lower than 3.0 on the subscale.

Points	Criteria
3	<ol style="list-style-type: none"> <li>An average of 4.25 on the designated social-emotional subscale of the ERS, with no one classroom score lower than 3.25 on the subscale.</li> <li>Staff: Child Ratio and Group Size <ul style="list-style-type: none"> <li>0-12 months 1:4,8</li> <li>13-24 months 1:6,12</li> <li>25-36 months 1:3, 16</li> <li>3 yrs 1:10, 20</li> <li>5 yrs 1:15, 30</li> <li>4 yrs 1:12, 24</li> <li>6 yrs and up 1:20, 30</li> </ul> </li> <li>Written transition procedures for children moving within a program or to other programs or beginning school.</li> </ol>
4	<ol style="list-style-type: none"> <li>An average of 4.5 on the designated social-emotional subscale of the ERS, with no one classroom score lower than 3.5 on the overall ERS.</li> <li>Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources.</li> <li>Staff : Child Ratio and Group Size <ul style="list-style-type: none"> <li>0-12 months 1:4, 8</li> <li>13-24 months 1:6, 12</li> <li>25-26 months 1:8, 16</li> <li>3 yrs 1:10, 20</li> <li>4 yrs 1:12, 24</li> <li>5 yrs 1:15, 20</li> <li>6 yrs and up 1:20, 30</li> </ul> </li> <li>Written transition procedures for children moving within a program or to other programs or beginning school.</li> </ol>
5	<ol style="list-style-type: none"> <li>An average of 5.0 on the overall ERS, with no one classroom score lower than 4.0.</li> <li>Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources.</li> <li>Provide a plan for continuity of care for all children 0-36 months of age.</li> <li>Implementation of LA Early Learning Guidelines and Program Standards; Birth through 3,(DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003).</li> <li>Staff: Child Ratio and Group Size <ul style="list-style-type: none"> <li>0-24 months 1:4, 8</li> <li>2 yrs 1:6, 12</li> <li>3 yrs 1:8, 16</li> <li>4 yrs 1:10, 20</li> <li>5 yrs a:10, 20</li> <li>6 yrs and up 1:12, 24</li> </ul> </li> </ol>

<sup>4</sup>For the purpose of this document, the designated social-emotional subscale of the ERS is defined as consisting of the following subscales: ITERS-R—Listening and Talking, Interaction and Program Structure; ECERS-R Language-Reasoning, Interaction and Program Structure.

**b. Staff Qualification Standards**

Points	Criteria
1	<p>All teachers and directors complete 3 hours of ERS training.</p> <p>Director (on-site)</p> <ol style="list-style-type: none"> <li>Six semester hour credits in care of young children or child development 2, and</li> <li>Three semester hour credits in administrative coursework 3, and</li> <li>One year experience teaching young children in an early childhood program.</li> </ol> <p>Assistant Director</p> <p>Three semester hour credits in care of young children or child development 2</p>

Points	Criteria
	<p>Lead Teacher</p> <p>All of Lead Teachers must complete 3 semester hour credits in care of young children or child development from a list of approved courses 2 or enroll in the course and complete within 1 year of employment</p> <p>Assistant Teacher</p> <p>50 percent of Assistant Teachers must have completed or be enrolled in 3 semester hour credits in the care of young children or child development 2 and complete the course within 1 year of employment.</p>
2	<p>All teachers and directors complete 3 hours of ERS training.</p> <p>Director</p> <ol style="list-style-type: none"> <li>Nine semester hour credits in care of young children or child development 2, and</li> <li>Three semester hour credits in administrative coursework 3, and</li> <li>One year of teaching experience and one year teaching or administrative experience in an early childhood program.</li> </ol> <p>Assistant Director</p> <ol style="list-style-type: none"> <li>Three semester hour credits in care of young children or child development 2, and</li> <li>Three semester hour credits in administrative coursework 3, and</li> <li>One year experience in teaching young children in an early childhood program.</li> </ol> <p>Lead Teacher</p> <ol style="list-style-type: none"> <li>75 percent of Lead Teachers must have completed 6 semester hour credits in the care of young children or child development from a list of approved courses or have completed 3 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment, and</li> <li>One year full-time experience in an early childhood setting.</li> </ol> <p>Assistant Teacher</p> <p>50 percent of Assistant Teachers must have completed or be enrolled in 3 semester hour credits in the care of young children or child development 2 and complete the course within 1 year of employment.</p>
3	<p>All teachers and directors complete 6 hours of ERS training. Director and lead teachers complete training in social-emotional screening of children. Director completes training in Louisiana's Early Learning Guidelines and Program Standards Birth through 3,(DSS 2005)and the LA Standards for Programs Serving 4 year old children (DOE 2003).</p> <p>Director</p> <ol style="list-style-type: none"> <li>Twelve semester hours in care of young children or child development 2, and</li> <li>Six semester hours of administrative coursework 3, and</li> <li>One year teaching experience and 1 year administrative experience and 1 year teaching or administrative experience in an early childhood setting for a total of 3 years experience.</li> </ol> <p>Assistant Director</p> <ol style="list-style-type: none"> <li>Three semester hour credits in care of young children or child development 2, and</li> <li>Three semester hour credits in administrative coursework 3, and</li> <li>One year experience in teaching young children in an early childhood program.</li> </ol> <p>Lead Teacher</p> <ol style="list-style-type: none"> <li>75 percent of Lead Teachers must have completed 9 semester hour credits in the care of young children or child development from a list of approved courses or have completed 6 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 3 and complete within a year of employment, and</li> <li>One year full-time experience in an early childhood setting.</li> </ol>

Points	Criteria
	Assistant Teacher 50 percent Assistant Teachers must have completed 3 semester hour credits in the care of young children or child development 2.
4	All teachers and directors complete 6 hours of ERS training. Director and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs. Director and lead teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth through 3, (DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003). Director 1. Fifteen semester hour credits in the care of young children or child development 2, and 2. Six semester hour credits of administrative coursework 3, and 3. One year teaching experience and 1 year administrative experience and 2 years teaching and/or administrative experience in an early childhood setting for a total of 4 years experience. Assistant Director 1. Three semester hour credits in care of young children or child development2, and 2. Three semester hour credits in administrative coursework3, and 3. One year experience in teaching young children in an early childhood program. Lead Teacher 1. 75 percent of Lead Teachers must completed 12 semester hour credits in the care of young children or child development from a list of approved courses or have completed 9 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment, and 2. Two years full-time experience in an early childhood setting. Assistant Teacher All Assistant Teachers must have completed 3 semester hour credits in the care of young children or child development 2.
5	All teachers and directors complete 6 hours of ERS training. Director and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs. Director and all teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth through 3, (DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003). Director 1. Associate's degree in the care of young children, child development or related field, with specific coursework in infant-toddler care, care of exceptional children and care of school age children or equivalent such as Director III Pathways and/or including 2. Six semester hour credits or 75 hrs of administrative training 3, and 3. One year teaching experience and 1 year administrative experience and 3 years teaching and/or administrative experience in an early childhood setting for a total of 5 years experience. Assistant Director 1. Six semester hour credits in care of young children or child development 2, and 2. Three semester hour credits in administration 3, and 3. 1 year experience in teaching young children in an early childhood program. Lead Teacher 1. All Lead Teachers must have 6 semester hour credits in the care of young children or child development2 from a list of approved courses, and 2. 75 percent of Lead Teachers must have completed 15 semester hour credits in the care of young children or

Points	Criteria
	child development 2 from a list of approved courses or have completed 12 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment, and 3. Two years full-time experience in an early childhood setting for all teachers. Assistant Teacher All Assistant Teachers must have completed 6 semester hour credits in the care of young children or child development or have completed 3 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment.
	<sup>2</sup> The following may be substituted to meet this requirement of 3 semester hour credits in the care of young children or child development: • a CDA or • have approved high school child development courses or • have 5 years full-time experience in an early childhood program or • have completed a Level V LA Pathways Child Care Classroom Certificate. The following may be used to meet the requirement of up to 6 semester hour credits in the care of young children or child development: • a CDA or • have completed a Level VI LA Pathways Child Care Classroom Certificate. An individual may use the above substitutions to meet the requirements for a maximum of 6 semester hour credits. The following may be substituted to meet the requirement for 3 semester hour credits in administration: • LA Pathways Administrator Certificate or • National Administrator Credential (NAC) or • 3 years experience in administration or • a combination of 1 year in administration experience and 4 years in teaching young children in an early childhood program NOTE: For Director's Qualification: Experience in teaching young children or administration may only be substituted one time. At the next QRS review, the necessary educational requirement (credits in the care of young children or child development or administration) must be met.

c. An additional Quality Point can be earned by meeting additional requirements in both the Administrative Practices and the Family/Community Involvement areas.

Quality Point	
Points	Criteria
1	Administrative Practices—meet 3 requirements below 2. Provide 4 of the benefits from the list* of options below for all full time staff. 2. Include grievance procedure and a professional conduct code for staff in written personnel policies. 3. Pay scale based on education, experience, responsibilities and merit. 4. Provide training to staff on cultural sensitivity. 5. Written parent and staff confidentiality policy and provide training to staff and Family/Community Involvement - meet 4 requirements below 1. Participate in meetings for directors provided by Resource and Referral agency at least quarterly, with the director or assistant director attending 50% of the meetings. 2. Provide a complaint process for parents. 3. Offer opportunity for a formal parent/teacher conference meeting annually. 4. Provide an expanded list of local community resources to parents annually including, but not limited to, LaCHIP, Medicaid, child care assistance, 5. housing assistance, food stamps and information on a child's medical home



Quality Point	
Points	Criteria
	6. Parent Advisory Council meets annually to review policies, procedures and parent handbook 7. one group meeting per year offered to all families 8. one parent education workshop offered per year by center or other agency.

\*Staff benefits options: employee health insurance or comparable health benefits; paid annual leave; paid sick leave; paid holiday; child care benefit/discount; bonus based on merit/achievement or education; retirement compensation; annual increments based on merit; tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes; differential shift pay, flextime, pay professional association fee.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

### §5907. Participation

A. A child care center will complete the application for participation and a quality rating verification visit will be conducted by the division staff.

B. Quality ratings will be valid for one year from the date of the star rating award letter. A child care center can apply for a rating review six months after the date of their current rating award.

C. Centers that have achieved a Star Rating will have their rating revoked if the child care license is revoked or if the child care center is referred to the Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies for revocation.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

### §5909. Quality Rating System Awards

A. Bonus payments will be issued after the end of each calendar quarter to Class A child care centers that care for children receiving assistance from the Child Care Assistance Program in accordance with the Star Level rating for that quarter. The payment is equal to the percentages of all CCAP payments received by the Class A center during the prior calendar quarter as defined below.

1. One Star Level—0 percent.
2. Two Star Level—3 percent.
3. Three Star Level—8 percent.
4. Four Star Level—13.5 percent.
5. Five Star Level—20 percent

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Ann S. Williamson  
Secretary

0705#018

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

Child Care Quality Rating System (LAC 67:III.Chapter 59)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC

67:III.Chapter 59, Child Care Quality Rating System effective May 1, 2007, pursuant to the authority granted to the department by the Child Care and Development Fund (CCDF). This Rule shall remain in effect for a period of 120 days.

As a result of the devastation resulting from Hurricanes Katrina and Rita, child care centers in Louisiana have struggled to rebuild in affected areas and in other parts of the state have expanded their capacity to serve displaced families. In an effort to guide these centers as they restore much critically needed child care services, the agency has established a quality rating system for child care centers which uses licensing as a foundation and sets a continuum of quality indicators focused on the social-emotional needs of children. The Quality Rating System provides a mechanism by which child care centers can be assessed regarding the level of quality care given. The agency is strongly focused on providing quality child care and plans to implement the Quality Rating System through the emergency rulemaking process. The implementation of a Quality Rating System will provide a guide for parents to choose higher settings of child care beyond basic licensure and offers a structure for child care centers to communicate the level of quality offered in their center.

Subpart 18, Chapter 59 is being adopted to address the Child Care Quality Rating System which will assess, improve, and communicate the level of quality in early care and education settings.

### Title 67

### SOCIAL SERVICES

### Part III. Family Support

### Subpart 18. Child Care Quality Rating System

### Chapter 59. Child Care Quality Rating System

### Subchapter A. Authority

### §5901. Authority

A. The Child Care Quality Rating System is established and administered under the authority of state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

### §5903. Definitions

*Assistant Directors*—must be on site for a minimum of 20 hours per week for centers with an enrollment of 101 or more.

*Assistant Teachers*—care for children at least 16 or more hours per week and must meet assistant teacher qualifications.

*Child Care Center*—licensed day care center.

*Child Care Resource and Referral (CCR and R)*—local agencies providing services to families, early childhood professionals and communities statewide.

*Child Development Associate (CDA) Credential*—a nationally recognized credential which can be used to meet staff qualification requirements.

*College Transcripts*—official record of coursework issued by institutions of higher learning.

*Director*—an administrator who meets the director qualifications and is on-site a minimum of 30 hours per week. This requirement can be met by having one or more persons on site who meet these qualifications.

*Early Childhood Degree*—may include human ecology, child development, or family studies.

*Early Childhood Environment Rating Scale (revised ECERS-R)*—a research-based assessment tool that measures environment indicators of quality in preschool classrooms.

*Environment Rating Scales (ERS)*—the assessment tools that measure environmental indicators of quality. They include the Infant Toddler Environment Rating Scale-Revised and ECERS-R, as well as the School Age Child Care Environment Rating Scale (SACCERS) for school age programs, and the Family Day Care Environment Rating Scale (FDCERS) for family child care homes.

*Group*—those children who are assigned for most of the day to a specific teacher and who occupy an individual classroom or well defined space that prevents intermingling of children from different groups within a larger group or area.

*Infant Toddler Environment Rating Scale-Revised (ITERS-R)*—a research-based assessment tool that measures environment indicators of quality in preschool classrooms.

*Lead Teacher*—a teacher who has primary responsibility for a designated classroom, planning and supervision and spends at least 25 hours a week in that classroom. All classrooms must have a lead teacher.

*Quality Rating System (QRS) Points*—points given in the Program and Staff Qualifications areas and all items within a point must be verified to receive credit. The total points earned determine the star award.

*Social Emotional Subscales of the Environment Rating Scales*—subscales used to determine the ERS score for Points 1-4. In the ECERS, the Language-Reasoning, Interaction and Program Structure are used and in the ITERS, the Listening and Talking, Interaction and Program Structure.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

**§5905. Quality Rating System Requirements**

A. The Child Care Quality Rating System (QRS) is designed to assess levels of child care, support improvements of child care programs, and communicate the level of quality in early care and education programs. The QRS consists of five star rating levels that can be earned by a licensed child care center, uses licensing as the foundation and has 4 star levels above Louisiana's licensing standards. The system components (Administrative Practices, Family and Community Involvement, Program and Staff Qualifications) have indicators that must be achieved to earn the star level.

1. Foundation One Star Level. A child care center shall have a license to operate and comply with standards as defined in Louisiana Administrative Code, Title 48, Chapter 53, Sections 5301-5354 and meet all the requirements in each of the four component areas, a selection of which is listed below.

- a. Administration Practices—written center policies and procedures including:
  - i. center's policies and practices;
  - ii. emergency and evacuation procedures;
  - iii. admission policy;
  - iv. daily schedule;

- v. complaint procedure;
- vi. open door policy;
- vii. non-discrimination policy;
- viii. abuse/neglect policy;
- ix. discipline policy;
- x. job description;
- xi. quarterly staff session/meeting.
- b. Family and Community Involvement—parent consultation prior to enrollment.
  - i. Director makes the center's policies and procedures available to the parent.
  - ii. Parent permitted to visit the center anytime during regular hours as long as child is enrolled.
- c. Program Ratios

0-12 months	1:5
1 yr	1:7
2 yrs	1:11
3 yrs	1:13
4 yrs	1:15
5 yrs	1:19
6 yrs up	1:23
Other requirements in regulations.	

- d. Staff Qualifications
  - i. Director—
    - (a). on-site full-time director who is 21 yrs old;
    - (b). meet director qualifications in Louisiana Administrative Code, Title 48, Chapter 53.
  - ii. Teacher—
    - (a). 18 yrs or older;
    - (b). within 1 week of employment, staff receive orientation with content as specified, followed by 4 days of supervised work with children;
    - (c). complete required annual clock hours of approved training;
    - (d). meet staff qualifications as identified in LAC 48:Chapter 53.
- 2. Foundation Two Star Level. A child care center must meet all the standards for a Foundation Star One, have been in operation for six months, and meet the following.
  - a. Administrative Practices—
    - i. written personnel policies including operational hours, dress code, use of telephone, and schedule;
    - ii. job descriptions that include list of qualifications on file and provided to all staff;
    - iii. provide 1 staff benefit from the list of options below for all full time staff. Staff benefits options:
      - (a). employee health insurance or comparable health benefits;
      - (b). paid annual leave;
      - (c). paid sick leave;
      - (d). paid holidays, child care benefit/discount;
      - (e). bonus based on merit/achievement or education;
      - (f). retirement compensation;
      - (g). annual increments based on merit;
      - (h). tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes;
      - (i). differential shift pay, flextime, pay professional association fee.

- b. Family and Community Involvement—
  - i. parent provided pre-enrollment visit and center tour;
  - ii. give every parent enrolling a child, a list of community resources including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, food stamps and information on a child's medical home.

- c. Program—
  - i. make 4 of the following activity areas available daily:
    - (a). art and creative play;
    - (b). children's books;
    - (c). blocks and block building;
    - (d). manipulatives; and
    - (e). family living and dramatic play;
  - ii. complete a self assessment of program and develop an improvement plan.

d.i. Staff Qualifications—directors and teachers join the Louisiana Pathways Child Care Career Development System Registry. Director attends 3 hours of ERS training.

- (a). Director (on-site)—
  - (i). three semester hour credits in care of young children or child development<sup>2</sup>; and
  - (ii). three semester hour credits in administration<sup>3</sup>; and
  - (iii). one year experience in teaching young children in an early childhood program.

(b). Assistant Director—three semester hour credits in care of young children or child development<sup>2</sup>.

(c). Teacher—75 percent of lead teachers must meet one of the following:

- (i). complete a three semester hour credits course in care of young children or child development<sup>2</sup> from a list of approved courses or enroll in the course and complete within 1 year of employment.

ii. Staff Qualifications

(a). Director. An administrator who meets the director qualifications and is on-site a minimum of 30 hours per week. This requirement can be met by having one or more persons on site who meet these qualifications.

(b). Assistant Directors. For centers with an enrollment of 101 or more, there must be a second director on site for a minimum of 20 hours per week.

(c). Teacher. A Lead Teacher is a teacher who has primary responsibility for a designated classroom, planning and supervision and spends at least 25 hours a week in that classroom. All classrooms must have a lead teacher. All other staff who care for children at least 16 or more hours per week are designated as Assistant Teachers and must meet assistant teacher staff qualifications.

<sup>2</sup>The following may be substituted to meet this requirement of 3 semester hour credits in the care of young children or child development: a CDA or have approved high school child development courses or have 5 years full-time experience in an early childhood program or have completed a Level V LA Pathways Child Care Classroom Certificate. The following may be used to meet the requirement of up to 6 semester hour credits in the care of young children or child development: CDA or have completed a Level VI LA Pathways Child Care Classroom Certificate. An individual may use the above substitutions to meet the requirements for a maximum of 6 semester hour credits.

<sup>3</sup>The following may be substituted to meet the requirement for 3 semester hour credits in administration: LA Pathways Administrator Certificate or National Administrator Credential (NAC) or 3 years experience in administration or

a combination of 1 year in administration experience and 4 years in teaching young children in an early childhood program.

NOTE: For Director Qualification: Experience in teaching young children or administration may only be substituted one time. At the next QRS review, the necessary educational requirement (credits in the care of young children or child development or credits in administration) must be met.

3. Point Standards for Child Care Centers Seeking Three Star Level, Four Star Level, and Five Star Level Ratings. To achieve a higher level of rating, a program must maintain all requirements at the Foundation Two Star level and earn points in the Program and Staff Qualifications component areas by meeting the requirements listed below. At least one point must be earned in each component area, Staff Qualifications and Program. The Quality Point referenced in Subparagraph 3.c may also be earned. The total number of points will determine the Star Level rating awarded to the center.

Total Number of Points	Star Level Rating
3-5 points	Three Stars
6-9 points	Four Stars
10-11 points	Five Stars

a. Program Standards

Points	Criteria
1	An average of 3.75 on the designated social-emotional subscale of the Environment Rating Scales (ERS) 4, with no one classroom score lower than 3.0 on the subscale.
2	An average of 4.0 on the designated social-emotional subscale of the ERS, with no one classroom score lower than 3.0 on the subscale.
3	1. An average of 4.25 on the designated social-emotional subscale of the ERS, with no one classroom score lower than 3.25 on the subscale. 2. Staff: Child Ratio and Group Size 0-12 months 1:4,8 13-24 months 1:6,12 25-36 months 1:3, 16 3 yrs 1:10, 20 4 yrs 1:15, 30 5 yrs 1:12, 24 6 yrs and up 1:20, 30 3. Written transition procedures for children moving within a program or to other programs or beginning school.
4	1. An average of 4.5 on the designated social-emotional subscale of the ERS, with no one classroom score lower than 3.5 on the overall ERS. 2. Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources. 3. Staff: Child Ratio and Group Size 0-12 months 1:4, 8 13-24 months 1:6, 12 25-26 months 1:8, 16 3 yrs 1:10, 20 4 yrs 1:12, 24 5 yrs 1:15, 20 6 yrs and up 1:20, 30 4. Written transition procedures for children moving within a program or to other programs or beginning school.
5	1. An average of 5.0 on the overall ERS, with no one classroom score lower than 4.0. 2. Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of

Points	Criteria
	<p>enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources.</p> <p>3. Provide a plan for continuity of care for all children 0-36 months of age.</p> <p>4. Implementation of LA Early Learning Guidelines and Program Standards; Birth through 3, (DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003).</p> <p>5. Staff: Child Ratio and Group Size</p> <p>0-24 months 1:4, 8</p> <p>2 yrs 1:6, 12</p> <p>3 yrs 1:8, 16</p> <p>4 yrs 1:10, 20</p> <p>5 yrs a:10, 20</p> <p>6 yrs and up 1:12, 24</p>

<sup>4</sup>For the purpose of this document, the designated social-emotional subscale of the ERS is defined as consisting of the following subscales: ITERS-R—Listening and Talking, Interaction and Program Structure; ECERS-R Language-Reasoning, Interaction and Program Structure.

### b. Staff Qualification Standards

Points	Criteria
1	<p>All teachers and directors complete 3 hours of ERS training.</p> <p>Director (on-site)</p> <ol style="list-style-type: none"> <li>Six semester hour credits in care of young children or child development 2, and</li> <li>Three semester hour credits in administrative coursework 3, and</li> <li>One year experience teaching young children in an early childhood program.</li> </ol> <p>Assistant Director</p> <p>Three semester hour credits in care of young children or child development 2</p> <p>Lead Teacher</p> <p>All of Lead Teachers must complete 3 semester hour credits in care of young children or child development from a list of approved courses 2 or enroll in the course and complete within 1 year of employment</p> <p>Assistant Teacher</p> <p>50 percent of Assistant Teachers must have completed or be enrolled in 3 semester hour credits in the care of young children or child development 2 and complete the course within 1 year of employment.</p>
2	<p>All teachers and directors complete 3 hours of ERS training.</p> <p>Director</p> <ol style="list-style-type: none"> <li>Nine semester hour credits in care of young children or child development 2, and</li> <li>Three semester hour credits in administrative coursework 3, and</li> <li>One year of teaching experience and one year teaching or administrative experience in an early childhood program.</li> </ol> <p>Assistant Director</p> <ol style="list-style-type: none"> <li>Three semester hour credits in care of young children or child development 2, and</li> <li>Three semester hour credits in administrative coursework 3, and</li> <li>One year experience in teaching young children in an early childhood program.</li> </ol> <p>Lead Teacher</p> <ol style="list-style-type: none"> <li>75 percent of Lead Teachers must have completed 6 semester hour credits in the care of young children or child development from a list of approved courses or have completed 3 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment, and</li> <li>One year full-time experience in an early childhood setting.</li> </ol>

Points	Criteria
	<p>Assistant Teacher</p> <p>50 percent of Assistant Teachers must have completed or be enrolled in 3 semester hour credits in the care of young children or child development 2 and complete the course within 1 year of employment.</p>
3	<p>All teachers and directors complete 6 hours of ERS training. Director and lead teachers complete training in social-emotional screening of children. Director completes training in Louisiana's Early Learning Guidelines and Program Standards Birth through 3, (DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003).</p> <p>Director</p> <ol style="list-style-type: none"> <li>Twelve semester hours in care of young children or child development 2, and</li> <li>Six semester hours of administrative coursework 3, and</li> <li>One year teaching experience and 1 year administrative experience and 1 year teaching or administrative experience in an early childhood setting for a total of 3 years experience.</li> </ol> <p>Assistant Director</p> <ol style="list-style-type: none"> <li>Three semester hour credits in care of young children or child development 2, and</li> <li>Three semester hour credits in administrative coursework 3, and</li> <li>One year experience in teaching young children in an early childhood program.</li> </ol> <p>Lead Teacher</p> <ol style="list-style-type: none"> <li>75 percent of Lead Teachers must have completed 9 semester hour credits in the care of young children or child development from a list of approved courses or have completed 6 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 3 and complete within a year of employment, and</li> <li>One year full-time experience in an early childhood setting.</li> </ol> <p>Assistant Teacher</p> <p>50 percent Assistant Teachers must have completed 3 semester hour credits in the care of young children or child development 2.</p>
4	<p>All teachers and directors complete 6 hours of ERS training. Director and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs. Director and lead teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth through 3, (DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003).</p> <p>Director</p> <ol style="list-style-type: none"> <li>Fifteen semester hour credits in the care of young children or child development 2, and</li> <li>Six semester hour credits of administrative coursework 3, and</li> <li>One year teaching experience and 1 year administrative experience and 2 years teaching and/or administrative experience in an early childhood setting for a total of 4 years experience.</li> </ol> <p>Assistant Director</p> <ol style="list-style-type: none"> <li>Three semester hour credits in care of young children or child development 2, and</li> <li>Three semester hour credits in administrative coursework 3, and</li> <li>One year experience in teaching young children in an early childhood program.</li> </ol> <p>Lead Teacher</p> <ol style="list-style-type: none"> <li>75 percent of Lead Teachers must completed 12 semester hour credits in the care of young children or child development from a list of approved courses or have completed 9 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment, and</li> </ol>

Points	Criteria
	<p>2. Two years full-time experience in an early childhood setting. Assistant Teacher All Assistant Teachers must have completed 3 semester hour credits in the care of young children or child development 2.</p>
5	<p>All teachers and directors complete 6 hours of ERS training. Director and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs. Director and all teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth through 3, (DSS 2005) and the LA Standards for Programs Serving 4 year old children (DOE 2003).</p> <p>Director</p> <ol style="list-style-type: none"> <li>Associate's degree in the care of young children, child development or related field, with specific coursework in infant-toddler care, care of exceptional children and care of school age children or equivalent such as Director III Pathways and/or including</li> <li>Six semester hour credits or 75 hrs of administrative training 3, and</li> <li>One year teaching experience and 1 year administrative experience and 3 years teaching and/or administrative experience in an early childhood setting for a total of 5 years experience.</li> </ol> <p>Assistant Director</p> <ol style="list-style-type: none"> <li>Six semester hour credits in care of young children or child development 2, and</li> <li>Three semester hour credits in administration 3, and</li> <li>1 year experience in teaching young children in an early childhood program.</li> </ol> <p>Lead Teacher</p> <ol style="list-style-type: none"> <li>All Lead Teachers must have 6 semester hour credits in the care of young children or child development 2 from a list of approved courses, and</li> <li>75 percent of Lead Teachers must have completed 15 semester hour credits in the care of young children or child development 2 from a list of approved courses or have completed 12 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment, and</li> <li>Two years full-time experience in an early childhood setting for all teachers.</li> </ol> <p>Assistant Teacher</p> <p>All Assistant Teachers must have completed 6 semester hour credits in the care of young children or child development or have completed 3 semester hour credits and be enrolled in an additional 3 semester hour credits in the care of young children, child development or related coursework 2 and complete within a year of employment.</p>
	<p><sup>2</sup>The following may be substituted to meet this requirement of 3 semester hour credits in the care of young children or child development:</p> <ul style="list-style-type: none"> <li>a CDA or</li> <li>have approved high school child development courses or</li> <li>have 5 years full-time experience in an early childhood program or</li> <li>have completed a Level V LA Pathways Child Care Classroom Certificate.</li> </ul> <p>The following may be used to meet the requirement of up to 6 semester hour credits in the care of young children or child development:</p> <ul style="list-style-type: none"> <li>a CDA or</li> <li>have completed a Level VI LA Pathways Child Care Classroom Certificate.</li> </ul> <p>An individual may use the above substitutions to meet the requirements for a maximum of 6 semester hour credits. The following may be substituted to meet the requirement for 3 semester hour credits in administration:</p> <ul style="list-style-type: none"> <li>LA Pathways Administrator Certificate or</li> <li>National Administrator Credential (NAC) or</li> <li>3 years experience in administration or</li> <li>a combination of 1 year in administration experience and</li> </ul>

Points	Criteria
	<p>4 years in teaching young children in an early childhood program NOTE: For Director's Qualification: Experience in teaching young children or administration may only be substituted one time. At the next QRS review, the necessary educational requirement (credits in the care of young children or child development or administration) must be met.</p>

c. An additional Quality Point can be earned by meeting additional requirements in both the Administrative Practices and the Family/Community Involvement areas.

Quality Point	
Points	Criteria
1	<p>Administrative Practices—meet 3 requirements below</p> <ol style="list-style-type: none"> <li>Provide 4 of the benefits from the list* of options below for all full time staff.</li> <li>Include grievance procedure and a professional conduct code for staff in written personnel policies.</li> <li>Pay scale based on education, experience, responsibilities and merit.</li> <li>Provide training to staff on cultural sensitivity.</li> <li>Written parent and staff confidentiality policy and provide training to staff</li> </ol> <p>and</p> <p>Family/Community Involvement - meet 4 requirements below</p> <ol style="list-style-type: none"> <li>Participate in meetings for directors provided by Resource and Referral agency at least quarterly, with the director or assistant director attending 50% of the meetings.</li> <li>Provide a complaint process for parents.</li> <li>Offer opportunity for a formal parent/teacher conference meeting annually.</li> <li>Provide an expanded list of local community resources to parents annually including, but not limited to, LaCHIP, Medicaid, child care assistance,</li> <li>housing assistance, food stamps and information on a child's medical home</li> <li>Parent Advisory Council meets annually to review policies, procedures and parent handbook</li> <li>one group meeting per year offered to all families</li> <li>one parent education workshop offered per year by center or other agency.</li> </ol>

\*Staff benefits options: employee health insurance or comparable health benefits; paid annual leave; paid sick leave; paid holiday; child care benefit/discount; bonus based on merit/achievement or education; retirement compensation; annual increments based on merit; tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes; differential shift pay, flextime, pay professional association fee.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

**§5907. Participation**

A. A child care center will complete the application for participation and a quality rating verification visit will be conducted by the division staff.

B. Quality ratings will be valid for one year from the date of the star rating award letter. A child care center can apply for a rating review six months after the date of their current rating award.

C. Centers that have achieved a Star Rating will have their rating revoked if the child care license is revoked or if the child care center is referred to the Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies for revocation.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

**§5909. Quality Rating System Awards**

A. Bonus payments will be issued after the end of each calendar quarter to Class A child care centers that care for children receiving assistance from the Child Care Assistance Program in accordance with the Star Level rating for that quarter. The payment is equal to the percentages of all CCAP payments received by the Class A center during the prior calendar quarter as defined below.

1. One Star Level—0 percent.
2. Two Star Level—3 percent.
3. Three Star Level—8 percent.
4. Four Star Level—13.5 percent.
5. Five Star Level—20 percent

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Ann S. Williamson  
Secretary

0705#035

**DECLARATION OF EMERGENCY**

**Department of Social Services  
Office of Family Support**

FITAP/STEP—Eligibility Requirements and Criteria in Family Transition Assessment (LAC 67:III.1247 and 5727)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend Title 67 Part III, Subpart 2, Family Independence Temporary Assistance Program, Section 1247 and Subpart 16, Strategies to Empower People (STEP) Program, Section 5727 effective June 9, 2007. This declaration is necessary to extend the original Emergency Rule effective February 9, 2007, since it is effective for a maximum of 120 days and will expire before the final Rule takes place. (The final Rule will be published in the August 2007 *Louisiana Register* issue.) This Emergency Rule shall remain in effect for a period of 120 days.

Pursuant to the authority of Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant and in accordance with the Administrative Procedure Act, the agency shall amend §1247.E.1-2 to restore language concerning the eligibility requirements for cash assistance stated in Title IV of the Social Security Act and restore language in §5727.B.1-4 which addresses criteria in the Family Transition Assessment to assist participants upon their transition from cash assistance. This text was erroneously omitted from a previous Rule.

Emergency action in this Rule is necessary because failure to amend this language in a timely manner could result in loss of benefits to eligible individuals, noncompliance with federal regulations and the imposition of penalties and sanctions by the Administration for Children and Families, the federal agency responsible for overseeing Louisiana's TANF Block Grant.

**Title 67**

**SOCIAL SERVICES**

**Part III. Family Support**

**Subpart 2. Family Independence Temporary Assistance Programs**

**Chapter 12. Application, Eligibility, and Furnishing Assistance**

**Subchapter B. Conditions of Eligibility**

**§1247. Time Limits**

A. - D.3....

E. Any month for which such assistance was provided will be disregarded from the 24- and 60-month time limits with respect to the individual, if the individual was:

1. a minor child; and
2. not the head of a household or married to the head of a household.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.6. and R.S. 46:460.5(A)(3); Act 58, 2003 Reg. Session; Act 675, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR 26:349 (February 2000), LR 27:2263 (December 2001), LR 30:494 (March 2004), LR 31:102 (January 2005), LR 33:

**Subpart 16. Strategies to Empower People (STEP) Program**

**Chapter 57. Strategies to Empower People (STEP) Program**

**Subchapter C. STEP Program Process**

**§5727. Family Transition Assessment**

A. ...

B. The FTA shall include but is not limited to:

1. a plan for on-going success in the work force;
2. identification of short and long-term goals;
3. identification of potential barriers and an action plan to overcome these barriers; and
4. information regarding eligibility for supportive services including, but not limited to: Medicaid benefits, food stamp benefits, child care, transportation, Louisiana Child Health Insurance Program, the earned income tax credit, and TANF-funded services.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session; Act 110 and Act 675, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004), amended LR 31:103 (January 2005), LR 33:

Ann Silverberg Williamson  
Secretary

0705#067

**DECLARATION OF EMERGENCY**

**Department of Social Services  
Office of Family Support**

Temporary Emergency Disaster Assistance Program (LAC 67:III.5583)

Editor's Note: This Emergency Rule is being printed according to R.S. 49:954.1(C) which directs the Office of the State Register to publish documents submitted by a rulemaking

agency without regard to validity. This Emergency Rule was not submitted in accordance with R.S. 49:950 et seq.

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to amend §5583, Temporary Emergency Disaster Assistance Program (TEDAP) effective January 1, 2007. This Rule shall remain in effect for a period of 120 days.

The agency proposes to expand the income eligibility criteria of the TEDAP Program to 250 percent of the federal poverty level and to expand the list of allowable household establishment funds available to eligible families to include living accommodations, transportation, job skills or employment assistance, child care vouchers, non-medical substance abuse treatment, mental health services, utility assistance, property repair, household items, basic personal items and moving assistance.

Emergency action is necessary due to the extreme demands for social services caused by the hurricanes in the Gulf of Mexico in calendar year 2005. TANF funds may be used for a wide array of human services and this appropriation must be expended by September 30, 2007. The authorization for emergency action in this matter is contained in Act 16 of the 2005 Regular Session of the Louisiana Legislature.

**Title 67  
SOCIAL SERVICES**

**Part III. Family Support**

**Subpart 15. Temporary Assistance to Needy Families  
(TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5583. Temporary Emergency Disaster Assistance  
Program**

A. Effective October 26, 2005, the agency will enter into contracts to provide disaster emergency services to needy families with dependent children or pregnant women who are displaced because of disasters. The program will provide the following services.

1. Services or Benefits Considered to Meet On-Going Basic Needs. These services shall not be provided for a period (in whole or in part) to exceed four months. Such services and benefits include, but are not limited to the provision of such items as basic personal items, household items, housing and utility assistance, living accommodations, transportation, job skills or employment assistance, child care vouchers, non-medical substance abuse treatment, mental health services, property repair, and moving assistance.

A.2 - B. ...

C. Eligibility for services is limited to needy families with minor dependent children, or minor dependent children living with caretaker relatives within the fifth degree of relationship, or pregnant women:

1. ...

2. whose income is at or below 250 percent of the federal poverty level or who are categorically eligible because a member of the family receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program

(LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session, TANF Emergency Response and Recovery Act of 2005.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:32:1617 (September 2006), amended LR 33:

Ann Silverberg Williamson  
Secretary

0705#019

**DECLARATION OF EMERGENCY**

**Department of Social Services  
Office of Family Support**

Temporary Emergency Disaster Assistance Program  
(LAC 67:III.5583)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to amend §5583, Temporary Emergency Disaster Assistance Program (TEDAP) effective May 1, 2007. This Rule shall remain in effect for a period of 120 days.

The agency proposes to expand the income eligibility criteria of the TEDAP Program to 250 percent of the federal poverty level and to expand the list of allowable household establishment funds available to eligible families to include living accommodations, transportation, job skills or employment assistance, child care vouchers, non-medical substance abuse treatment, mental health services, utility assistance, property repair, household items, basic personal items and moving assistance.

Emergency action is necessary due to the extreme demands for social services caused by the hurricanes in the Gulf of Mexico in calendar year 2005. TANF funds may be used for a wide array of human services and this appropriation must be expended by September 30, 2007. The authorization for emergency action in this matter is contained in Act 16 of the 2005 Regular Session of the Louisiana Legislature.

**Title 67  
SOCIAL SERVICES**

**Part III. Family Support**

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accommodations, transportation, job skills or employment assistance, child care vouchers, non-medical substance abuse treatment, mental health services, property repair, and moving assistance.

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2. whose income is at or below 250 percent of the federal poverty level or who are categorically eligible because a member of the family receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session, TANF Emergency Response and Recovery Act of 2005.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:32 1617 (September 2006), amended LR 33:

Ann Silverberg Williamson  
Secretary

0705#036

## DECLARATION OF EMERGENCY

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

#### Dove Season

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

For the purposes of this Declaration of Emergency, the term *dove* refers to the following species, and only the following species: mourning doves, white-winged doves, Eurasian collared-doves, and ringed-turtle doves.

The hunting seasons for Doves during the 2007-2008 hunting season shall be as follows:

Split Season, Zoned, 70 days in each zone

#### South Zone:

September 1 – September 9

October 13 – November 25

December 22 – January 7

#### North Zone:

September 1 – September 16

October 13 – November 11

December 15 – January 7

#### Bag Limit

Mourning and white-winged doves and fully dressed Eurasian collared- and ringed turtle-doves: Daily bag limit 12 in aggregate, Possession 24 in aggregate, but note: there is no bag limit on Eurasian collared-doves or ringed turtle-

doves provided that a fully feathered wing and head remain attached to the carcass of the bird. Fully dressed Eurasian-collared doves and ringed-turtle doves (those without a fully feathered wing and head naturally attached to the carcass) shall be included in the aggregate bag.

#### Dove Hunting Zones:

The state shall be divided into North and South Dove Hunting Zones by the following boundary: Beginning at the Texas-Louisiana border on La. Highway 12; thence east along La. Highway 12 to its intersection with U.S. Highway 190; thence east along U.S. Highway 190 to its intersection with Interstate 12; thence east along Interstate 12 to its intersection with Interstate 10; thence east along Interstate 10 to the Mississippi state line.

#### Shooting and Hawking Hours:

Dove: One-half hour before sunrise to sunset except 12:00 noon to sunset September 1, 2007.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 40,000 sportsmen who hunt doves, selection of season dates, bag limits, shooting hours, and zone boundary must be established and presented to the U.S. Fish and Wildlife Service before the rulemaking process can be completed.

The aforementioned season dates, bag limits, and shooting hours will become effective on September 1, 2007 and extend through sunset on February 29, 2008.

Earl P. King, Jr.  
Chairman

0705#030

## DECLARATION OF EMERGENCY

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

#### Oyster Season—Certain Public Seed Grounds

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 49:967(D), and under the authority of R.S. 56:433(B)1 which provides that the Wildlife and Fisheries Commission may designate what parts or portions of the natural reefs may be fished for oysters, and a Resolution adopted by the Wildlife and Fisheries Commission on August 3, 2006 which authorized the Secretary of the Department of Wildlife and Fisheries to take emergency action if necessary to reopen areas if substantial oyster resources are located, the secretary hereby declares:

The 2006/2007 oyster season shall reopen at one-half hour before sunrise on Friday, May 4, 2007 and shall close at one-half hour after sunset on Friday, May 18, 2007 in the following public oyster seed grounds.

1. The Little Lake Public Oyster Seed Grounds as described in the Louisiana Administrative Code (LAC) 76:VII.521.

2. That portion of the Vermilion/East and West Cote Blanche/Atchafalaya Bay Seed Grounds as described in LAC 76:VII.507 and 509 located east of South Point of Marsh Island and south of the Department of Health and



Hospitals' May-August 2007 seasonal reclassification line that generally runs from South Point of Marsh Island in Iberia Parish ENE to Point Chevreuil in St. Mary Parish.

Much of the area within these public oyster seed grounds was previously closed to harvest by the Department of Health and Hospitals (DHH) seasonal reclassification lines during the 2006/2007 oyster season (September 2006 to April 2007). However, these areas will be open by the DHH May-August seasonal reclassification lines. Substantial oyster resources continue to exist in these public oyster seed grounds in areas previously closed to harvest. It has been determined by area biologists that the reefs would benefit from limited harvest.

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of non-living reef material in seed oyster loads, or if oyster resources and/or reefs are being adversely impacted, or if enforcement problems are encountered.

Bryant O. Hammett, Jr.  
Secretary

0705#020

## **DECLARATION OF EMERGENCY**

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

#### **Reef Fish Harvest**

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

**Gag, Black and Red Grouper Recreational Seasons:** The 2007 seasons for the recreational harvest of gag, black and red grouper in Louisiana state waters are as follows: the recreational fishing season for gag, black and red grouper will close at 12:01 a.m. on February 15, 2007, and remain closed until 12:01 a.m. on March 15.

**Recreational Trip and Possession Limits for Groupers:** The recreational trip and possession limit for groupers (combined) is as follows: Groupers, combined, excluding goliath grouper and Nassau grouper—five per person per day, but not to exceed one speckled hind or one warsaw grouper per vessel per day or one red grouper per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat—their bag limit is zero.

"Groupers, combined" Contains the Following Species: Red hind, rock hind, speckled hind, black grouper, misty grouper, red grouper, snowy grouper, yellowedge grouper, yellowfin grouper, yellowmouth grouper, Warsaw grouper, gag grouper, and scamp. No person shall possess Goliath grouper (formerly known as jewfish) or Nassau grouper

whether taken from within or without Louisiana territorial waters.

Effective with any recreational trip or possession limit under this Emergency Rule, no person shall harvest or possess the affected species or group of species, whether taken from within or without Louisiana territorial waters in excess of such established trip or possession limit.

#### **Commercial Red Snapper Regulations:**

1. All persons aboard a vessel for which no commercial vessel permit for Gulf reef fish has been issued by the National Marine Fisheries Service (NMFS) under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit for red snapper which may not be bartered or sold. No person aboard any vessel shall commercially possess, sell, barter, trade, exchange or attempt to sell, barter, trade or exchange red snapper unless possessing a federal permit for the harvest of Gulf of Mexico Reef Fish and a federal red snapper Individual Fishing Quota (IFQ) vessel endorsement.

2. **Requirement for IFQ Vessel Endorsement and Allocation:** In addition to the federal commercial vessel permit for Gulf reef fish, in order to fish for, possess, or land Gulf red snapper, regardless of where harvested or possessed, a federal Gulf red snapper IFQ vessel endorsement must have been issued to the vessel and be on board. No person shall commercially harvest or land red snapper without holding or being assigned IFQ allocation at least equal to the pounds of red snapper landed/docked at a shore side location or off loaded. On the last fishing trip of the year a vessel may exceed by 10 percent the remaining IFQ allocation.

3. No person shall purchase, sell, exchange, barter or attempt to purchase, sell, exchange, or barter any red snapper in excess of any possession limit for which a commercial license, permit and appropriate allocation was issued.

4. **Requirement for Federal IFQ Dealer Endorsement:** In addition to the requirement for a federal dealer permit for Gulf reef fish, for a dealer to receive Gulf red snapper from a commercial fishing vessel, he must have a federal red snapper IFQ dealer endorsement. For a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement to sell to anyone other than a permitted dealer, such persons must also have a federal Gulf red snapper IFQ dealer endorsement.

5. **Requirement for Transaction Approval Code:** The owner or operator of a vessel landing red snapper is responsible for calling NMFS Office of Law Enforcement at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the required NMFS landing transaction report and, thus, will preclude issuance of the required NMFS-issued transaction approval code. Possession of commercial red snapper from the time of transfer from a vessel through possession by a dealer is prohibited unless the red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of red snapper in possession.

6. **Offloading and Transfer:** No person shall offload from a vessel or receive from a vessel commercially

harvested red snapper during the hours from 6 p.m. until 6 a.m., local time. No person who is in charge of a commercial red snapper fishing vessel shall offload red snapper from the vessel prior to three hours after proper notification is made to National Oceanographic and Atmospheric Administration (NOAA) Fisheries. At-sea or dockside transfer of commercial red snapper from one vessel to another vessel is prohibited.

7. VMS Requirement: No person shall commercially harvest red snapper from a vessel unless that vessel is equipped with a fully operational and approved Vessel Monitoring System (VMS) device. Approved devices are those devices approved by NOAA Fisheries and operating under the requirements mandated by NOAA Fisheries.

The commission authorizes the secretary to set the effective date for the VMS requirements of this Emergency Rule when the effective date is set for the requirement of VMS on reef fish commercial vessels in Federal waters, and when a request is received from the Regional Administrator of NMFS to enact compatible regulations within and without Louisiana state waters. This Emergency Rule is effective on May 3, 2007, and extends the January 4, 2007 Emergency Rule printed on page 32 of the January 2007 *Louisiana Register*.

Bryant O. Hammett, Jr.  
Secretary

0705#034

#### **DECLARATION OF EMERGENCY**

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

###### **Shrimp Season—Partial Reopening in State Outside Waters**

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close outside waters by zone each year as it deems appropriate upon inspection of and based upon technical and biological data which indicates that marketable shrimp, in sufficient quantities, are available for harvest, and a resolution adopted by the Wildlife and Fisheries Commission on January 4, 2007, which authorizes the Secretary of the Department of Wildlife and Fisheries to reopen any area closed to shrimping when the closure is no longer necessary, the secretary hereby declares:

That State Outside Waters from the eastern shore of the Atchafalaya River Ship Channel at Eugene Island as delineated by the Channel red buoy line to the U.S. Coast Guard navigational light off the northwest shore of Caillou Boca at 29 degrees 03 minutes 10 seconds north latitude and 90 degrees 50 minutes 27 seconds west longitude, shall reopen to shrimping at 6:00 a.m. April 17, 2007.

Recent biological samples taken by department personnel indicate that small white shrimp which have over-wintered

in these waters from January through the present time have reached marketable sizes and the closure is no longer necessary. Significant numbers of small white shrimp still remain in State Outside Waters west of the Atchafalaya River Ship Channel to the western shore of Freshwater Bayou Canal at 92 degrees 18 minutes 33 seconds west longitude, and this area will remain closed to shrimping until further notice.

Bryant O. Hammett, Jr.  
Secretary

0705#004

#### **DECLARATION OF EMERGENCY**

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

###### **Shrimp Season—Spring Inshore**

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters, the Wildlife and Fisheries Commission does hereby set the 2007 Spring Shrimp Season in Louisiana state waters to open as follows:

Shrimp Management Zone 1, that portion of Louisiana's inside waters from the Mississippi/Louisiana State line to the eastern shore of South Pass of the Mississippi River, to open at noon, May 28, 2007, and

Shrimp Management Zone 2, that portion of Louisiana's inside waters from the eastern shore of South Pass of the Mississippi River to the western shore of Vermilion Bay and Southwest Pass at Marsh Island and that portion of the State's Outside Waters south of the Inside/Outside Shrimp Line as described in R.S. 56:495 from the Atchafalaya River Ship Channel at Eugene Island as delineated by the River Channel Buoy Line to the eastern shore of Freshwater Bayou at 92 degrees 18 minutes 33 seconds west longitude to open at noon, May 14, 2007.

Shrimp Management Zone 3, that portion of Louisiana's inside waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island westward to the Louisiana/Texas State Line, to open at noon, May 28, 2007.

The commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to close any portion of the state's inside waters to protect small white shrimp if biological and technical data indicates the need to do so, or enforcement problems develop.

Earl P. King, Jr.  
Chairman

0705#031

## DECLARATION OF EMERGENCY

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

#### Tilefish Season—Commercial

The commercial season for the harvest of tilefishes in Louisiana state waters will close effective 12:01 a.m., April 18, 2007. The tilefish assemblage includes tilefish, goldface tilefish, blackline tilefish, anchor tilefish and blueline tilefish. The secretary has been informed that the commercial season for tilefishes in the federal waters of the Gulf of Mexico off the coast of Louisiana will close at 12:01 a.m., April 18, 2007 and will remain closed until 12:01 a.m., January 1, 2008.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department by the commission in its resolution of January 4, 2007 to modify opening and closing dates of 2007 commercial reef fish seasons in Louisiana state waters when he is informed by the Regional Director of the National Marine Fisheries Service that the seasons have been closed in adjacent federal waters, and that the NMFS

requests that the season be modified in Louisiana State waters, the secretary hereby declares:

The commercial fishery for tilefishes in Louisiana waters will close at 12:01 a.m., April 18, 2007, and remain closed until 12:01 a.m., January 1, 2008. Effective with this closure, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell tilefishes whether within or without Louisiana waters. Effective with closure, no person shall possess tilefishes in excess of a daily bag limit, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing tilefish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The secretary has been notified by National Marine Fisheries Service that the commercial tilefish season in federal waters of the Gulf of Mexico will close at 12:01 a.m., April 18, 2007 and the season will remain closed until 12:01 a.m., January 1, 2008. Having compatible season regulations in state waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of this species in the long term.

Bryant O. Hammett, Jr.  
Secretary

0705#005

# Rules

## RULE

### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Adoption Awareness (LAC 28:CXV.2347)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 741—Louisiana Handbook for School Administrators*, §2347, Health Education. The revision to §2347 results from Act 571 of the 2006 Louisiana Legislative Session, which requires that adoption awareness be included in Health Education or any other course determined by BESE to be more appropriate. Adoption awareness shall include instruction on the benefits of adoption for families wishing to add a child, for potential adoptees, and for persons who are pregnant or who have a child for whom they are unable to care.

#### Title 28 EDUCATION

#### Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

#### Chapter 23. Curriculum and Instruction

#### §2347. Health Education

A. The health education course offerings shall be as follows.

Course Title(s)	Units
Health Education	1/2

B. Cardiopulmonary resuscitation (CPR) shall be taught.

C. Health Education shall include instruction in adoption awareness. Adoption awareness shall include instruction on the benefits of adoption for families wishing to add a child, for potential adoptees, and for persons who are pregnant or who have a child for whom they are unable to care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:263.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1296 (June 2005), amended LR 33:817 (May 2007).

Weegie Peabody  
Executive Director

0705#011

## RULE

### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for Nonpublic School Administrators—Adoption Awareness (LAC 28:LXXIX.2301)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Nonpublic Bulletin 741, *Louisiana*

*Handbook for Nonpublic School Administrators*, §2301, General. The revision to §2301 results from Act 571 of the 2006 Louisiana Legislative Session, which requires that adoption awareness be required instruction in nonpublic high schools in a manner that is the sole discretion of the nonpublic high school. Adoption awareness shall include instruction on the benefits of adoption for families wishing to add a child, for potential adoptees, and for persons who are pregnant or who have a child for whom they are unable to care.

#### Title 28 EDUCATION

#### Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators

#### Chapter 23. High School Program of Studies

#### §2301. General

A. The high school shall provide a comprehensive college preparatory and/or vocational curriculum.

B. Adoption awareness shall be required instruction in nonpublic high schools in a manner that is the sole discretion of the nonpublic high school. Adoption awareness shall include instruction on the benefits of adoption for families wishing to add a child, for potential adoptees, and for persons who are pregnant or who have a child for whom they are unable to care.

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. 17:263; R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2353 (November 2003), amended LR 31:3085 (December 2005), LR 33:817 (May 2007).

Weegie Peabody  
Executive Director

0705#010

## RULE

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Educational Leader (LAC 28:CXXXI.240, 703, 705, and 707)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §240, Educational Leader Practitioner (Residency) Program, §703, Introduction, §705, Educational Leader Certificate Level 1, and §707, Educational Leader Certificate Level 2. This policy changes the type and level of the teaching certificate required to be certified as an Educational Leader Level 1 and also changes the required number of years of teaching experience from five to three years. The new policy will also allow for two new alternate paths of certification for

Educational Leader Level 1 applicants. The revised policy will enhance the current educational leadership certification policy and will allow individuals to pursue certification as an educational leader through multiple standards-based, research-based pathways.

**Title 28  
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for  
State Certification of School Personnel  
Chapter 2. Louisiana Teacher Preparation Programs  
§240. Educational Leader Practitioner (Residency)  
Program**

A. State-approved private providers and Louisiana colleges or universities may choose to offer an Educational Leader Practitioner (Residency) Program for purposes of certifying successful candidates for Educational Leader Level 1 certification. Educational Leader Practitioner Program providers must submit a program proposal to the Louisiana Department of Education, Division of Certification and Preparation. Programs will be reviewed for adherence to program guidelines, and those meeting guidelines will be recommended to the Board of Elementary and Secondary Education for approval status. The Educational Leader Practitioner Program is a streamlined certification path that combines intensive coursework and practical, on-the-job experience.

1. Admission to the Program. Program providers work with local educational agency or state/district-approved charter school personnel to identify Educational Leader Practitioner Program candidates who will be employed by the local educational agency or approved charter school (hereinafter referred to as hiring authority). For admission, candidates must:

- a. possess a baccalaureate degree from an accredited university;
- b. have three years of K-12 teaching experience and demonstrate strong knowledge of instruction through a rigorous screening process by an approved program provider in partnership with one or more hiring authorities;
- c. hold or be eligible to hold a valid Louisiana Type B or Level 2 teaching certificate or have a comparable level out-of-state teaching certificate;
- d. meet other non-course requirements established by the approved leader practitioner program:
  - i. candidates will be chosen using a rigorous selection process designed to determine the potential of candidates as school leaders. The screening process for each cohort will involve a multi-phase process that includes, as a minimum, a written application, recommendations, and interviews.

2. Leader Preparation (First Summer)

a. All leader practitioner candidates will participate in an initial summer institute training that will build skills in the areas of instructional, organizational, and personal leadership. The *Standards for Educational Leaders in Louisiana* will serve as the basis of the curriculum. The summer institute will provide a balanced curriculum that includes learning opportunities grounded in practical experience, theory, and research. Topics to be addressed include but are not limited to the following: Leading with a Vision, Using Data to Lead School Improvement, Creating and Leading Effective School Teams, Building a High-

Performance Learning Culture and Professional Learning Communities, and Leading and Learning with Technology. Acquired knowledge and skills will be utilized in the planning of residency experiences with a residency supervisor, who is assigned by the program provider. In addition, participants will begin developing their portfolio and Educational Leadership Development plan.

b. The summer session will include a minimum of 135 contact hours (or 9 credit hours).

3. Principal Residency and Support (School Year)

a. Candidates assume positions as administrative interns (with responsibilities equivalent to that of an Assistant Principal). The hiring authority pays the candidate's salary.

b. Interns will serve in at least two different schools, and will experience a full range of activities associated with all phases of school administration. In school experiences should provide for a minimum of 125 days in the school.

c. During the school year, candidates participate in weekly sessions provided by the program provider and in four seminars (two during the first semester and two during the second semester) that address immediate needs of the practitioner leader. Weekly sessions and seminars should provide for a minimum of 60 contact hours (or 4 credit hours).

d. Practitioner leaders receive one-on-one supervision through a residency supervisor provided by the program providers.

e. Practitioner leaders will receive support from a school-based principal mentor identified by the hiring authority and the program provider, and a principal coach provided by the program provider. Hiring authorities and providers will collaborate to identify appropriate site for placement of an intern at a school and with a strong principal who serves as the school-based mentor. Additionally, the provider identifies and trains principal coaches (e.g., former principals, retired principals) who support one or more candidates.

4. Leader Preparation (Second Summer)

a. All leader practitioner candidates will participate in a follow-up summer institute training that will continue to build skills in the areas of instructional and organizational leadership. The *Standards for Educational Leaders in Louisiana* will serve as the basis of the curriculum. The summer institute will provide a balanced curriculum that includes learning opportunities grounded in practical experience, theory, and research. Topics to be addressed include but are not limited to the following: Leading a Focused Drive toward Student Achievement, Organizing the Learning Environment, and Ethical Leadership. In addition, program participants will finalize their portfolio and Educational Leadership Development plan.

b. The summer session will include 135 contact hours (or 9 credit hours).

i. An approved program provider may choose to provide a portion of the second summer curriculum and contact hours during the first summer or academic school year.

ii. A minimum of 45 contact hours (or 3 credit hours) must be provided during the second summer.

iii. The provider must provide evidence that the curriculum topics have all been addressed and that the required contact hours/credit hours have been met by the end of the second summer.

5. Practitioner Leader Performance Review (Mid-Year and End of Program)

a. Program providers, mentor principals, and principal coaches form teams to review mid-year performance of practitioner leaders and determine the extent to which the practitioner leader has demonstrated educational leadership proficiency. If weaknesses are cited, teams will identify additional types of support to address areas of needs.

b. Program providers, mentor principals, and principal coaches form teams to review end-of-program performance of practitioner leaders and determine the extent to which the aspiring leader has demonstrated educational leadership proficiency and readiness for the Educational Leader Level 1 certification.

6. Total Hours Required. Minimum of 330 contact hours of coursework (22 credit hours) and minimum of 125 days serving as practitioner leader (administrative intern).

7. Passage of School Licensure Exam. Have a passing score on the School Leaders Licensure Assessment (SLLA) in accordance with state requirements.

8. Program requirements must be met by the end of the second summer session. For certification purposes, approved providers will submit signed statements to the Department of Education indicating that the student completing the Educational Leader Practitioner Program performance-based certification path met the following requirements:

a. passed the School Leaders Licensure Assessment;

b. completed all program coursework (summers and school year) and the residency;

c. completed prescriptive plans (if weaknesses were demonstrated);

d. demonstrate readiness for the educational leader based on performance against the *Standards for Educational Leaders in Louisiana* and approved program provider indicators of skills needed for educational leader success;

e. completed an Educational Leadership Development plan (an individualized learning plan that outlines areas of development in each of the *Standards for Educational Leaders in Louisiana*;

f. completed a portfolio demonstrating skills needed to collaborate with teachers and use data to increase student achievement; successfully observe, evaluate, and provide feedback to teachers to improve student achievement; and lead the school or a portion of the school through a change process that helps to build a positive school community.

9. On-Going Support (Second and Third Year). Program providers will give support services to educational leaders who have completed the practitioner leader program and are serving as school leaders during their second and third years in the program. Support services are coordinated with the state-administered Louisiana Education Leaders Induction Program and include regular visits to their schools

from a successful, veteran principal who provides feedback and coaching and leads regular cohort meetings.

10. Professional License. Upon completion of all requirements of the program, the candidate will receive an Educational Leader Level 1 license.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:818 (May 2007)

## **Chapter 7. Administrative and Supervisory Credentials**

### **Subchapter A. The Educational Leadership Certification Structure—Effective July 1, 2006**

#### **§703. Introduction**

A. The Educational Leadership Certification structure, effective July 1, 2006, provides for four levels of leader certification: Teacher Leader; Educational Leader Level 1; Educational Leader Level 2; and Educational Leader Level 3. The Teacher Leader Endorsement is an option for a teacher to be identified as a teacher leader; it is not a state required credential for a specific administrative position. The Educational Leader Level 1 license is an entry-level license for individuals seeking to qualify for school and/or district leadership positions (e.g., assistant principals, principals, parish or city supervisors of instruction, supervisors of child welfare and attendance, special education supervisors, or comparable school/district leader positions). An individual moves from a Level 1 to a Level 2 license upon completion of the Educational Leader Induction Program and the required years of experience. The Level 3 license qualifies an individual for employment as a district superintendent.

B. Educational leadership preparation programs, induction programs, and continuing learning units required for re-licensure are aligned with the following state and national standards:

1. Standards for Educational Leaders in Louisiana;

2. Interstate School Leaders License Consortium [ISLLC] Standards for School Leaders; and

3. Educational Leadership Constituent Council [ELCC] Standards for Advanced Programs in Educational Leadership, the standards used by the National Council for the Accreditation of Colleges of Teachers Evaluation [NCATE] for university program reviews.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1822 (October 2006), amended LR 33:819 (May 2007).

#### **§705. Educational Leader Certificate Level 1**

A. This is the certification authorization needed by those who fill school and district educational leadership positions (e.g., assistant principal, principal, parish or city supervisor of instruction, supervisor of child welfare and attendance, special education supervisor, or comparable school/district leader positions). This endorsement is valid for five years and is renewable every five years based upon successful completion and verification of required continuing learning units. An Educational Leader Certificate Level 1 may be obtained through either a master's degree path or through an alternate path.

1. Master's Degree Path. To receive an entry-level certificate in educational leadership, the candidate must:

a. hold or be eligible to hold a valid Louisiana Type B or Level 2 teaching certificate or have a comparable level out-of-state teaching certificate and three years of teaching experience in his/her area of certification;

b. complete a competency-based graduate degree preparation program in the area of educational leadership from a regionally accredited institution of higher education; and

c. have a passing score on the School Leaders Licensure Assessment (SLLA), in accordance with state requirements.

2. Alternate Path 1. Three alternate paths are available to individuals seeking an Educational Leader Certificate Level 1. The Alternate Path 1 is for persons who already hold a master's degree and are seeking to add Educational Leader certification to a valid teaching certificate:

a. hold or be eligible to hold a valid Louisiana Type B or Level 2 teaching certificate or have a comparable level out-of-state teaching certificate and three years of teaching experience in his/her area of certification;

b. have previously completed a graduate degree program from a regionally accredited institution of higher education;

c. meet competency-based requirements, as demonstrated by completion of an individualized program of educational leadership from a regionally accredited institution of higher education. An individualized program will be developed based on a screening of each candidate's competencies upon entering into the graduate alternative certification program; and

d. have a passing score on the School Leaders Licensure Assessment (SLLA) in accordance with state requirements.

3. Alternate Path 2. Three alternate paths are available to individuals seeking an Educational Leader Certificate Level 1. The Alternate Path 2 is for persons who already hold a master's degree in education and are seeking to add Educational Leader certification to a valid teaching certificate:

a. hold or be eligible to hold a valid Louisiana Type B or Level 2 teaching certificate or have a comparable level out-of-state teaching certificate and three years of teaching experience in his/her area of certification;

b. have previously completed a graduate degree program in education from a regionally accredited institution of higher education;

c. provide documented evidence of leadership experiences (240 clock hours or more) at the school and/or district level; and

d. have a passing score on the School Leaders Licensure Assessment (SLLA) in accordance with state requirements.

4. Alternate Path 3. Three alternate paths are available to individuals seeking an Educational Leader Certificate Level 1. The Alternate Path 3 is for persons who already hold a baccalaureate degree from a regionally accredited institution of higher education and are seeking to add Educational Leader certification to a valid teaching certificate through a competency-based educational leader practitioner (residency) program (See Chapter 2, §240):

a. hold or be eligible to hold a valid Louisiana Type B or Level 2 teaching certificate or have a comparable level out-of-state teaching certificate and three years of teaching experience in his/her area of certification;

b. demonstrate strong knowledge of instruction through a rigorous screening process by an approved program provider;

c. complete a competency-based educational leader practitioner/residency preparation program in the area of educational leadership from a state-approved private provider or a regionally accredited institution of higher education; and

d. have a passing score on the School Leaders Licensure Assessment (SLLA) in accordance with state requirements.

5. Renewal Requirements. For purposes of maintaining a valid endorsement, holders of an Educational Leader Level 1 endorsement are required to complete 150 continuing learning units of professional development consistent with the Individual Professional Growth Plan (IPGP) over a five-year time period. The starting date of the five-year cycle depends on the type of teaching certificate that the individual holds.

a. If an individual holds a Louisiana Professional Teaching Certificate Level 2, then the renewal date is tied to the renewal date on the professional teaching certificate.

b. If an individual holds a Louisiana Type B Teaching Certificate or a comparable level out-of-state teaching certificate, then the renewal time period begins with the date of issue of the Educational Leader Level 1 endorsement.

6. Upon employment as a school/district educational leader, an individual with an Educational Leader Level 1 endorsement must enroll in the state-approved Educational Leader Induction Program under the direction of the Louisiana Department of Education. Once employed as a school/district educational leader, the individual has three years to complete the induction program.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1823 (October 2006), amended LR 33:819 (May 2007).

### **§707. Educational Leader Certificate Level 2**

A. This endorsement is valid for five years and is renewable every five years based upon successful completion and verification of required continuing learning units.

1. To receive an Educational Leader Certificate Level 2, the individual must:

a. hold a valid Level 1 Educational Leader certificate, Louisiana provisional principal certification, or comparable level out-of-state educational leader certificate;

b. have three years of teaching experience in his/her area(s) of certification;

c. have completed the Educational Leader Induction Program under the administration of the Louisiana Department of Education:

i. the induction period begins upon the candidate's first full-time administrative appointment (permanent or acting) as an assistant principal, principal, parish or city supervisor of instruction, supervisor of child

welfare and attendance, or comparable school/district leader position;

ii. the Educational Leader Induction Program must be completed within a three-year period;

d. have three years of educational leadership experience at the level of assistant principal or above.

2. Renewal Requirements. For purposes of maintaining a valid endorsement, holders of an Educational Leader Level 2 endorsement are required to complete 150 continuing learning units of professional development consistent with the Individual Professional Growth Plan (IPGP) over a five-year time period. The starting date of the five-year cycle depends on the type of teaching certificate that the individual holds.

a. If an individual holds a Louisiana Professional Teaching Certificate Level 2, then the renewal date is tied to the renewal date on the professional teaching certificate.

b. If an individual does not hold a Louisiana Professional Teaching Certificate Level 2, but does hold an Educational Leader Level 1 endorsement, then the renewal date is tied to the renewal date on the Educational Leader Level 1 endorsement.

c. If an individual holds neither a Louisiana Professional Teaching Certificate Level 2 nor an Educational Leader Level 1 endorsement, then the renewal time period begins with the date of issue of the Educational Leader Level 2 endorsement.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1823 (October 2006), amended LR 33:820 (May 2007).

Weegie Peabody  
Executive Director

0705#009

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 746—Louisiana Standards for State Certification of School Personnel—Special Education Program Deadline Extension (LAC 28:CXXXI.225 and 231)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, §225. Minimum Requirements for Approved Early Interventionist Special Education Birth to Five Years Program, and §231. Introduction. This policy extends the deadline date from January 1, 2007, to July 1, 2007, for special education programs in Early Interventionist Special Education Birth to Five Years, Significant Disabilities, Hearing Impaired, and Visually Impaired. This extension will allow campuses to continue offering their existing special education programs during spring 2007. This extension will provide students additional time to complete the special education programs currently in place. This policy change is requested so that university programs in special education areas can be reviewed for approval.

**Title 28**

**EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel**

**Chapter 2. Louisiana Teacher Preparation Programs  
Subchapter A. Traditional Teacher Preparation Programs**

**§225. Minimum Requirements for Approved Early Interventionist Special Education Birth to Five Years Program: Adopted November 18, 2004; Effective July 1, 2007**

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1789 (October 2006), amended LR 33:821 (May 2007).

**Subchapter B. Alternate Teacher Preparation Programs**

**§231. Introduction**

A. - D. ...

1. July 1, 2007—last date for candidates to be accepted into Post-Baccalaureate Programs.

2. August 31, 2010—last date for candidates who are already in Post-Baccalaureate Programs to complete those programs.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1790 (October 2006), amended LR 33:821 (May 2007).

Weegie Peabody  
Executive Director

0705#008

**RULE**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

**Abrasive Blasting Emissions  
(LAC 33:III.1323, 1325, 1327,  
1329, 1331, and 1333)(AQ249)**

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 adopted the Air regulations, LAC 33:III.1323, 1325, 1327, 1329, 1331, and 1333 (Log #AQ249).

This rule is intended to reduce particulate matter emissions from any facility that engages in or contracts to provide abrasive blasting and that is classified under a Standard Industrial Classification (SIC) Code beginning with 34, 35, or 37, or under SIC Code 1622 or 1721. The current rule is vague and not consistently followed. This rule clarifies the existing regulation by specifying the following standards of performance for abrasive blasting: prohibited materials and methods that cannot be used in abrasive blasting activities; requirement to control emissions through either enclosure or establishment of Best Management Practices; maintenance of control equipment; and



recordkeeping requirements. Abrasive blasting is a common practice in Louisiana and is not currently regulated in a consistent manner. Many of the complaints received by the department are related to abrasive blasting emissions. This situation can be ameliorated by setting clear performance standards that apply equally to all businesses that engage in abrasive blasting. The basis and rationale for this rule are to improve air quality by reducing particulate matter emissions.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

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

**Chapter 13. Emission Standards for Particulate Matter**

**Subchapter F. Abrasive Blasting**

**§1323. Emissions from Abrasive Blasting**

A. Purpose. The purpose of this Subchapter is to reduce particulate matter emissions from facilities that engage in abrasive blasting.

B. Scope. This Subchapter applies to any facility or contractor in the state that engages in or contracts to provide on-site abrasive blasting and that is classified under a Standard Industrial Classification (SIC) Code beginning with 34, 35, or 37 or under SIC Code 1622 or 1721.

C. Compliance. Compliance with these regulations does not eliminate the requirement to comply with any other state or federal regulation or any specific condition of a permit granted by the department.

1. Any new facility that is constructed after promulgation of these regulations shall comply with all of the requirements of this Subchapter before operation may commence.

2. Existing affected facilities shall comply with all of the requirements of this Subchapter as soon as practicable, but no later than one year after promulgation of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:822 (May 2007).

**§1325. Definitions**

A. Terms used in this Subchapter are defined in LAC 33:III.111 with the exception of the terms specifically defined below.

*Abrasive Material (Abrasives, Abrasive Media)*—any material used in abrasive blasting operations including, but not limited to, sand, slag, steel shot/grit, garnet, CO<sub>2</sub>, or walnut shells.

*Abrasive Blasting*—the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

*Abrasive Blasting Equipment*—any equipment utilized in abrasive blasting operations.

*Emission Control Equipment*—any device or contrivance, operating procedure, or abatement scheme, including, but not limited to, filters, ventilation systems, shrouds, or best management practices, that prevents or

reduces the emission of air contaminants from blasting operations.

*Enclose*—to place tarps, shrouds, or a solid structure on all sides and above an area used for abrasive blasting, or to fully surround a structure to be blasted.

*Hydroblasting*—abrasive blasting using high-pressure liquid as the propelling force or as the active cleaning agent.

*Indoor Abrasive Blasting*—abrasive blasting conducted inside of a permanent building equipped with a particulate matter collection system.

*Nuisance*—any condition of the ambient air beyond the property line of the emission source that is offensive to the senses, or that causes or constitutes an obstruction to the free use of property, so as to unreasonably interfere with the comfortable enjoyment of life or property. In determining whether or not a nuisance exists, the department may consider factors including, but not limited to, the following:

- a. the frequency of the emission;
- b. the duration of the emission;
- c. the intensity and offensiveness of the emission;
- d. the number of persons impacted;
- e. the extent and character of the detriment to the complainant; and
- f. the source's ability to prevent or avoid harm.

*Shade Factor*—for shrouds, the percent of area impermeable to particles 100 grit or greater, or to sunlight.

*Shroud or Tarp*—a device that is designed to enclose or surround the blasting activity to minimize the atmospheric dispersion of fine particulates and direct that material to a confined area for subsequent removal and disposal.

*Surround*—to place tarps, shrouds, or a solid structure on all sides of an area used for abrasive blasting.

*Wet Abrasive Blasting*—abrasive blasting with the addition of water to the air abrasive stream.

*Vacuum Blasting*—abrasive blasting in which a seal is maintained between the assembly and the blasting surface, thereby allowing the spent abrasive, surface material, and dust to be immediately collected by a vacuum device, equipped with a high efficiency (at least 95 percent) particulate filtration system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:822 (May 2007).

**§1327. Blasting Operations**

**A. Abrasive Materials and Methods**

1. Material derived from hazardous, toxic, medical, and/or municipal waste is prohibited from use as abrasive material.

2. Abrasives shall contain less than 10 percent (by weight) of fines that would pass through a No. 80 sieve as documented by the supplier. If supplier documentation is not provided for weight percent of fines in abrasive material, samples shall be taken according to ASTM standard ASTM D 75-87, reapproved 1992, before initial use.

3. Abrasives shall not be reused for abrasive blasting unless they meet the requirements of Paragraph A.2 of this Section.

B. The following abrasives and blasting methods are exempt from the provisions of Paragraph A.2 of this Section and LAC 33:III.1329.A and F and LAC 33:III.1333.A.4-5:

1. abrasive blasting using iron or steel shot/grit;

2. abrasive blasting using CO<sub>2</sub>;
3. hydroblasting or wet abrasive blasting;
4. vacuum blasting; and
5. abrasive blasting using other abrasives, as approved

by the department on a case-by-case basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:822 (May 2007).

### §1329. Performance Standard

A. Affected facilities shall either:

1. fully enclose the item, or surround the structure, to be blasted; or
2. prepare and implement a best management practices (BMP) plan as described in LAC 33:III.1331.

B. Blast cabinet exhaust shall be re-circulated to the cabinet or vented to emission control equipment.

C. If tarps are used to confine emissions due to abrasive blasting, the tarps shall:

1. have overlapping seams to prevent leakage of particulate matter;
2. have a shade factor of 80 percent or greater; and
3. be repaired prior to use if any single tear greater than 1 foot in length is present or if tears greater than 6 inches in length each are present.

D. If blasting is performed in a permanent building with a particulate matter collection system, the collection system shall be exhausted through effective control equipment with a particulate matter outlet grain loading of 0.05 gr/dscf or less, as documented by the control equipment manufacturer or demonstrated by performance testing.

E. When abrasive blasting is performed over waters of the state, blasting material or visible floating solids shall be prevented from reaching waters of the state or minimized to the maximum extent possible as specified in the facility and/or activity BMP or in accordance with the LPDES permit program.

F. Abrasive blasting activities shall not create a nuisance.

G. The facility shall maintain stockpiles of new and/or spent abrasive material in a manner that will minimize fugitive airborne emissions. Measures to minimize emissions shall include, but not be limited to, the following:

1. covering stockpiled material;
2. wetting stockpiled material; or
3. keeping stockpiled material in containers.

H. All emission control equipment shall be used and diligently maintained in proper working order according to the manufacturer's specifications whenever any emissions are being generated that can be controlled by the facility, even if the ambient air quality standards in affected areas are not exceeded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:823 (May 2007).

### §1331. Best Management Practices (BMP) Plans

A. Facilities that decide to use a BMP plan to comply with this Subchapter shall comply with all the requirements of this Section.

B. A complete copy of the BMP plan shall be kept at the facility and be made available to authorized representatives of the department upon request. Plans need not be submitted to the department unless requested by an authorized representative of the department.

C. Each facility shall have a designated person who is accountable for the implementation and effectiveness of the BMP plan.

D. Amendment of BMP Plan

1. After review of the plan, the department may require the owner/operator of the facility to amend the plan if the plan does not prevent nuisances and/or adverse off-site impacts.

2. The plan shall be amended whenever physical or operational modification of the facility renders the existing plan inadequate. The amendment shall be implemented prior to or concurrent with the facility modification.

E. Periodic Review of BMP Plan. The owner/operator of a facility shall review the plan every three years to determine if the plan adequately reduces nuisances and adverse off-site impacts. If it is determined that the plan is not adequate, the plan shall be amended within 90 days of the review to include more effective emission prevention and control technology.

F. Contents of BMP Plan. The BMP plan shall be prepared in accordance with sound engineering practices and must be site-specific. The plan information shall be presented in the following sequence:

1. the name, mailing address, and location of the facility;
2. the name of the operator of the facility;
3. the date and year of initial facility operation;
4. a description of the facility, including an indication of any nearby recreational areas, residences, or other structures not owned or used solely by the facility, and their distances and directions from the facility;
5. a description of any nearby waters of the state that may be affected, their distances and directions from the facility, and how emissions to those waters will be prevented or minimized;
6. a statement of the facility's procedures for preventing nuisances and/or adverse off-site impacts, including a description of any emission control equipment;
7. a statement of the facility's capability and procedures for taking corrective actions and/or countermeasures when nuisances and/or adverse off-site impacts occur;
8. written procedures for self-monitoring and self-inspection of the facility;
9. personnel training records as required by this Subchapter; and
10. signatures of responsible officials.

G. Provisions for personnel training shall be included in the BMP plan as follows.

1. Any employee and/or contractor conducting abrasive blasting shall be trained on proper abrasive blasting methods, proper handling of abrasive and spent material and floatable solids, the facility's plan, and good housekeeping practices for the facility.

2. Employees and contractors shall receive training pertaining to the plan at least once a year or when significant changes are made to the plan that affect their activities.

3. Employees, contractors, and customer representatives shall be instructed not to dispose of abrasive, spent, or floatable materials to air and water bodies or to drains, drainage channels, or trenches that lead to water bodies.

4. Contractors shall be notified of and required to perform in accordance with the provisions of the plan applicable to activities related to their contract.

#### H. Inspections and Records

1. The BMP plan shall be reviewed every three years to ensure that the plan meets the requirements of this Subchapter. Records of this review shall be signed or initialed by the person conducting the review, and an appropriate supervisor or the facility designee, and shall be retained for a minimum of three years.

2. In addition to other recordkeeping and reporting requirements of this Section, the following records should be maintained on the facility premises:

a. self-inspection reports prepared in accordance with Paragraph F.8 of this Section;

b. documentation of employee and contractor training, including dates, subjects, and hours of training and a list of attendees with signatures.

I. Verification by the Department. Facilities to which this Subchapter applies may be inspected by an authorized representative of the department to ensure implementation and adequacy of the facility's BMP plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:823 (May 2007).

### §1333. Recordkeeping and Reporting

A. The facility owner/operator shall maintain the following records on the facility premises at all times, and present them to an authorized representative of the department upon request:

1. permit application approval records and the facility's permit to construct/operate, where applicable;

2. a description of the type of *emission control equipment*, as defined in LAC 33:III.1325, employed at the facility;

3. descriptions and diagrams showing the locations of blasting operations on-site;

4. a monthly record of abrasive material usage, including:

a. for new material, weight percent of fines in abrasive material *per* the manufacturer;

b. if abrasive material is being reused, weight percent of fines as determined by sampling. For the purpose of determining weight percent of fines in abrasive material, samples shall be taken according to ASTM standard ASTM D 75-87, reapproved 1992;

5. applicable results, and data derived from results, of containment, ventilation, air, soil, fines, and other monitoring activities;

6. records of how spent material is handled, recycled, reused, or disposed of, including the names of, and any manifests or receipts from, any off-site facilities that accept the spent material; and

7. for abrasive blasting that is performed outside of a full enclosure or a blast cabinet, the following:

a. visual observations of particulate matter emissions, recorded at commencement of, and prior to ending of, operations less than four hours in duration, and every four hours for operations greater than four hours in duration;

b. observations of wind direction, recorded simultaneously with the observations required in Subparagraph A.7.a of this Section;

c. a daily record of actual operating times when such blasting is performed, based on a 24-hour clock.

B. Records required by this Subchapter or any BMP plan used to attain compliance with this Subchapter shall be maintained on a 36-month rolling basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:824 (May 2007).

Herman Robinson, CPM  
Executive Counsel

0705#042

### RULE

#### Department of Environmental Quality Office of the Secretary Legal Affairs Division

#### Syngenta Crop Protection Delisting Petition (LAC 33:V.4999)(HW094P)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Hazardous Waste regulations, LAC 33:V.4999.Appendix E (Log #HW094P).

Syngenta Crop Protection, Inc., is petitioning to exclude from hazardous waste regulations (delist) ash and scrubber water, derived from on-site incineration of listed hazardous wastes from crop protection product production and product distribution. The delisting program is regulated by LAC 33:V.105, which includes a formal rulemaking process. The applicants who wish to remove a waste from the list of hazardous wastes must submit a petition and satisfy all requirements of LAC 33:V.105. The exclusion applies only to incinerator ash and incinerator scrubber water resulting from incineration conducted at Syngenta's St. Gabriel facility. The department has reviewed Syngenta's petition and found it satisfies the delisting requirements. The department used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

Syngenta operates a multi-purpose incinerator (MPI). The MPI is permitted for the incineration of hazardous waste. Incinerator ash and scrubber water are generated following the incineration of hazardous and nonhazardous waste. Syngenta's wastes include EPA hazardous waste codes F001-F005 and F024, K157-K159, and all P and U codes. Syngenta's choice of conditional delisting is based on the operational merits of incineration as a waste management option. Incinerator ash and scrubber water do not contain detectable concentrations of organic constituents. Based on

the information submitted by Syngenta, the results of the analytical data, and the results from the DRAS, there was no obvious adverse effect on human health or the environment. The basis and rationale for this rule are to grant the petition on an evaluation of waste-specific information provided by the petitioner.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental Quality—Hazardous Waste**

**Chapter 49. Lists of Hazardous Wastes**

**§4999. Appendices—Appendix A, B, C, D, and E**

Appendix A. - Appendix D. ...

**Appendix E. Wastes Excluded under LAC 33:V.105.M**

A. - B.3.b. ...

<b>Table 1 - Wastes Excluded</b>
[See Prior Text in Dupont Dow Elastomers, LLC, Laplace, LA – BFI Waste Systems of Louisiana LLC, Colonial Landfill, Sorrento, LA, (4)]

<b>Table 1 - Wastes Excluded</b>
<b>Syngenta Crop Protection, Inc., St. Gabriel, LA</b>
Incinerator ash, at a maximum annual generation rate of 3,600 cubic yards per year, and incinerator scrubber water, at a maximum annual generation rate of 420,000 cubic yards per year (approximately 85 million gallons per year), result from incineration at the Syngenta Crop Protection, Inc., facility in St. Gabriel, Louisiana. Syngenta’s waste stream includes the United States Environmental Protection Agency (USEPA) hazardous waste codes F001-F005, F024, K157-K159, and all P and U codes. The constituents of concern for these waste codes are listed in LAC 33:V.4901. This exclusion applies only to incinerator ash and incinerator scrubber water resulting from incineration conducted at Syngenta’s St. Gabriel facility. Syngenta must implement a testing and management program that meets the following conditions for the exclusion to be valid.
(1). Testing Sample collection and analyses, including quality control (QC) procedures, must be performed according to methods described in Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods, EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110.
(1)(A). Inorganic Testing During the first 12 consecutive months of this exclusion, Syngenta must collect and analyze one monthly composite sample of the incinerator ash and two grab samples of the scrubber water. Composite samples of incinerator ash must be composed of one grab sample from each of two different days during a representative week of operation. The grab samples of scrubber water must be collected on two different days during a representative week of operation. The monthly samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the source incinerator ash and scrubber water. Syngenta must report to the department the unit operating conditions and analytical data (reported in milligrams per liter), including quality control information. If the department and Syngenta concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), Syngenta may replace the inorganic testing required in condition (1)(A) with the inorganic testing required in condition (1)(B). Condition (1)(A) shall remain effective until this concurrence is reached.

<b>Table 1 - Wastes Excluded</b>
<b>Syngenta Crop Protection, Inc., St. Gabriel, LA</b>
(1)(B). Subsequent Inorganic Testing After concurrence by the department, Syngenta may substitute the following testing conditions for those in condition (1)(A). Syngenta must continue to monitor operating conditions and analyze quarterly samples representative of normal operations. Syngenta must report to the department the unit operating conditions and analytical data (reported in milligrams per liter), including quality control information. Composite samples of incinerator ash must be composed of one grab sample from each of two different days during a representative week of operation, during the first month of each quarterly period. The grab samples of scrubber water must be collected on two different days during a representative week of operation, during the first month of each quarterly period. These quarterly representative samples of incinerator ash and scrubber water must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the source incinerator ash and scrubber water. If delisting levels for any inorganic constituents listed in condition (3)(A) are exceeded in any quarterly sample, Syngenta must re-institute testing as required in condition (1)(A). Syngenta may, at its discretion, analyze incinerator ash composite samples or scrubber water grab samples gathered more frequently than quarterly to demonstrate that smaller batches of waste are nonhazardous.
(1)(C). Organic Testing During the first 12 consecutive months of this exclusion, Syngenta must collect and analyze monthly one grab sample of incinerator ash and one grab sample of scrubber water. These monthly representative grab samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the source incinerator ash and scrubber water. Syngenta must report to the department the incinerator operating conditions and analytical data (reported in milligrams per liter), including quality control information. If the department and Syngenta concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(B), Syngenta may replace the organic testing required in condition (1)(C) with the organic testing required in condition (1)(D). Condition (1)(C) shall remain effective until this concurrence is reached.
(1)(D). Subsequent Organic Testing After concurrence by the department, Syngenta may substitute the following testing conditions for those in condition (1)(C). Syngenta must continue to monitor operating conditions and analyze one quarterly grab sample of incinerator ash and one quarterly grab sample of scrubber water representative of normal operations. Syngenta must report to the department the unit operating conditions and analytical data (reported in milligrams per liter), including quality control information. These quarterly representative grab samples of incinerator ash and scrubber water must be collected during the first month of each quarterly period and analyzed for the constituents listed in condition (3)(B) prior to disposal of the source incinerator ash and scrubber water. If delisting levels for any organic constituents listed in condition (3)(B) are exceeded in the quarterly sample, Syngenta must re-institute testing as required in condition (1)(C). Syngenta may, at its discretion, analyze incinerator ash composite samples or scrubber water grab samples gathered more frequently than quarterly to demonstrate that smaller batches of waste are nonhazardous.
(2). Waste Holding and Handling Syngenta must treat the incinerator ash and scrubber water as hazardous wastes until the verification testing is completed, as specified in conditions (1)(A) - (1)(D), and the incinerator ash and scrubber water have satisfied the delisting criteria, as specified in condition (3). If the levels of constituents in the samples of incinerator ash and scrubber water are below all of the applicable levels set forth in condition (3), then the incinerator ash and scrubber water thereby become nonhazardous solid wastes and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any monthly composite or other representative sample equal or exceed any of the delisting levels set in condition (3), the incinerator ash and scrubber water must be managed and disposed of in accordance with Subtitle C of RCRA until the incinerator ash and scrubber water meet the delisting levels. Syngenta must repeat the analyses for the constituents listed in conditions (3)(A) and (3)(B) prior to disposal.

<b>Table 1 - Wastes Excluded</b>
<b>Syngenta Crop Protection, Inc., St. Gabriel, LA</b>
(3). Delisting Levels Concentrations in conditions (3)(A) and (3)(B) must be measured in an extract from the waste samples by the method specified in LAC 33:V.4903.E. All leachable concentrations in the waste extract must be less than the following levels (all units are milligrams per liter).
(3)(A). Inorganic Constituents (all units are milligrams per liter) antimony—0.15; arsenic—0.50; barium—39.0; cadmium—0.11; chromium—5.0; copper—0.50; lead—5.0; nickel—20.0; vanadium—15; and zinc—200.
(3)(B). Organic Constituents (all units are milligrams per liter) acetone—26.0; benzene—0.05; carbon tetrachloride—0.18; chloroform—0.14; 1,2-dichlorobenzene—0.77; hexachlorobenzene—0.13; nitrobenzene—0.14; pentachlorobenzene—0.04; pyridine—0.26; toluene—10.0; toxaphene—89; and vinyl chloride—0.05.
(4). Changes in Operating Conditions If Syngenta significantly changes the operating conditions specified in the petition, Syngenta must notify the department in writing. After receipt of written approval by the department, Syngenta must re-institute the testing required in conditions (1)(A) and (1)(C) for a minimum of four consecutive months. Syngenta must report unit operating conditions and test data required by conditions (1)(A) and (1)(C), including quality control data, obtained during this period no later than 60 days after the changes take place. After written notification by the department, Syngenta may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Syngenta must fulfill all other requirements in condition (1).
(4)(A). Processing Equipment Syngenta may elect to change processing equipment based on operational performance and economic considerations. In the event that Syngenta changes operating equipment, Syngenta must re-institute processing and initiate testing required in conditions (1)(A) and (1)(C) for a minimum of four consecutive months. Syngenta must report unit operating conditions and test data required in conditions (1)(A) and (1)(C), including quality control data, obtained during this period, no later than 60 days after the changes take place. Following written notification by the department, Syngenta may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Syngenta must fulfill all other requirements in condition (1).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2180 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR 26:2509 (November 2000), LR29:1084 (July 2003), repromulgated LR 29:1475 (August 2003), amended by the Office of Environmental Assessment, LR 30:2464 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:445 (March 2007), LR 33:825 (May 2007).

Herman Robinson, CPM  
Executive Counsel

0705#044

## RULE

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

Water Quality Standards Triennial Revision  
(LAC 33:IX.1101, 1105, 1109, 1111, 1113,  
1115, 1119, 1121, and 1123)(WQ054)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.1101, 1105, 1109, 1111, 1113, 1115, 1119, 1121, and 1123 (Log #WQ054).

This rule will fulfill the department's obligation to review and revise, as necessary, and at least once every three years, the state's water quality standards, pursuant to 40 CFR 131.20. This revision of LAC 33:IX.Chapter 11 includes: addition, removal, and revision of definitions; minor revisions of the designated use descriptions; reformatting of the toxics criteria table; revision of human health toxics criteria, as necessary, according to an in-depth review of the most recent research, calculations, and methods; revision of water body subsegment descriptions; addition and removal of water body subsegments based on a recent review of the Louisiana coastline; addition of "Drinking Water Source" as a designated use for all water body subsegments with public water supply intakes; and grammar and spelling corrections. A notice for the corresponding revision of Volume 3 of the Water Quality Management Plan was published in the Potpourri section of the December 20, 2006, edition of the *Louisiana Register*. The basis and rationale for this rule are to carry out the purpose of the Clean Water Act and maintain water quality standards for the protection of surface water quality.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

### Title 33

### ENVIRONMENTAL QUALITY

#### Part IX. Water Quality

#### Subpart 1. Water Pollution Control

#### Chapter 11. Surface Water Quality Standards

#### §1101. Introduction

A. - B.3. ...

C. The water quality standards described in this Chapter are applicable to surface waters of the state and are utilized through the wasteload allocation and permit processes, to

develop effluent limitations for point source discharges to surface waters of the state. They can also form the basis for implementing the best management practices for control of nonpoint sources of water pollution.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 20:883 (August 1994), amended by the Office of the Secretary, Legal Affairs Division, LR 33:826 (May 2007).

### §1105. Definitions

*Acute Toxicity*—any lethal or deleterious effect on representative sensitive organisms that results from a single dose or exposure of a chemical or mixture of chemicals within a short period of time, usually less than 96 hours.

\* \* \*

*Artificial Heat*—heat derived from unnatural sources, such as power plants and other industrial cooling processes.

*Assimilation Capacity*—Repealed.

*Background Condition*—a concentration of a substance in a particular environment that is indicative of minimal influence by human (anthropogenic) sources.

\* \* \*

*Biological Succession*—Repealed.

\* \* \*

*Brackish Water*—surface water (creeks, bayous, rivers, lakes, estuaries) having an average salinity of 2 parts per thousand or greater and less than 10 parts per thousand; does not apply to wetland interstitial salinity regime.

*Chronic Toxicity*—toxicity that, after long-term exposure, exerts sublethal negative effects on, or is lethal to, representative, sensitive organisms.

*Clean Techniques*—an integrated system of sample collection and laboratory analytical procedures designed to detect concentrations of trace metals below criteria levels and eliminate or minimize inadvertent sample contamination that can occur during traditional sampling practices.

\* \* \*

*Estuary*—an area where freshwater systems and saltwater systems interact. Such areas can extend from coastal areas into inland rivers and streams as far as the limit of tidal influence or as far as the saltwater wedge reaches. Estuarine salinities are variable and influenced by physical (i.e., tide, sedimentation, precipitation), chemical (i.e., variable salinities), and biological (i.e., vegetation, faunal populations) factors.

*Excepted Use*—a water body classification reflecting natural conditions and/or physical limitations that preclude the water body from meeting its designated use(s). Such classifications include, but are not limited to, man-made waters, naturally dystrophic waters, and intermittent streams.

\* \* \*

*Fresh Warmwater Biota*—aquatic life species whose populations typically inhabit waters with warm temperatures (seasonal averages above 20°C, 68°F) and low salinities (less than 2 parts per thousand), including, but not limited to, black basses and freshwater sunfish and catfish and characteristic freshwater aquatic invertebrates and wildlife.

*Fresh Water*—surface water (creeks, bayous, rivers, lakes) having an average salinity of less than 2 parts per thousand; does not apply to wetland interstitial salinity regime.

\* \* \*

*Freshwater Swamps and Marshes*—Repealed in WQ068, March 2007.

*g/L*—grams per liter.

*Harmonic Mean Flow*—a statistical value used to calculate permit limits where 7Q10 flow is not appropriate. This calculation is intended for positive numbers and non-zero values, thereby, precluding the use of negative flow values. The formula is as follows:

$$\frac{1}{H} \equiv \frac{1}{n} \cdot \sum_{n} \frac{1}{x_i}$$

where:

H = harmonic mean

n = number of samples

x = actual samples

*Intermediate Marshes*—Repealed in WQ068, March 2007.

*Intermittent Stream*—Repealed.

*Intermittent Streams*—streams that provide water flow continuously during some seasons of the year but little or no flow during the drier times of the year.

\* \* \*

*Man-Made Watercourse*—Repealed.

*Man-Made Water Body*—a body of water that has been anthropogenically created or altered and is used primarily for drainage, conveyance, or retention of water for purposes of irrigation, transportation, sanitation, flood relief, water diversion, or natural resource extraction. The physical and hydrological characteristics of man-made water bodies are not conducive to the establishment of a balanced population of aquatic biota or to the full support of recreational activities.

*Marine Water*—of, relating to, or found in surface waters with average salinities greater than or equal to 10 parts per thousand; does not apply to wetland interstitial salinity regime.

*Marine Water Biota*—Repealed.

*µg/L*—micrograms per liter.

*mg/L*—milligrams per liter.

\* \* \*

*ng/L*—nanograms per liter.

\* \* \*

*Nonpoint Source*—a diffuse source of water pollution that does not discharge through a point source, but instead, flows freely across exposed natural or man-made surfaces such as agricultural or urban runoff and runoff from construction, mining, or silviculture activities that are not regulated as point sources.

\* \* \*

*Person*—any individual, municipality, public or private corporation, partnership, firm, the United States Government and any agent or subdivision thereof, or any other juridical person, which shall include, but not be limited to, trusts, joint stock companies, associations, the State of Louisiana, political subdivisions of the state, commissions, and interstate bodies.

\* \* \*

*Process Heat*—heat derived from unnatural sources such as power plants and other industrial cooling processes.

*Receiving Waters*—the waters of the state into which an effluent is, or may be, discharged.

*Saline Marshes*—Repealed in WQ068, March 2007.

\* \* \*

*ug/L*—Repealed.

*Ultra-Clean Techniques*—Repealed.

*Use Attainability Analysis (UAA)*—a structured scientific assessment of the factors (chemical, physical, biological, and economic) affecting the attainment of designated water uses in a water body. Recommendations for the revision of the water quality standards may be based upon a *use attainability analysis*.

\* \* \*

*Water Body Exception Classification*—a water body classification indicating natural conditions and/or physical limitations that preclude the water body from meeting water quality criteria. Classifications include, but are not limited to, man-made water bodies, naturally dystrophic waters, and intermittent streams.

*Water Pollution*—the introduction into the waters of the state by any means, including dredge-and-fill operations, of any substance in a concentration that tends to degrade the chemical, physical, biological, or radiological integrity of such waters, including, but not limited to, the discharge of brine from salt domes that are located on the coastline of Louisiana and the Gulf of Mexico into any waters off said coastline and extending there from three miles into the Gulf of Mexico.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2401 (December 1999), LR 26:2545 (November 2000), LR 29:557 (April 2003), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:456 (March 2007), LR 33:827 (May 2007).

### §1109. Policy

Water quality standards policies concerned with the protection and enhancement of water quality in the state are discussed in this Section. Policy statements on antidegradation, water use, water body exception categories, compliance schedules and variances, short-term activity authorization, errors, severability, revisions to standards, and sample collection and analytical procedures are described.

A. - B.3.f. ...

C. Water Body Exception Classification. Some water bodies may qualify for a water body exception classification. This classification will be made on a case-by-case basis. Whenever data indicate that a water body exception classification is warranted, the department will recommend the exception to the administrative authority for approval. In all cases where exceptions are proposed, the concurrence of the Water Quality Protection Division Director of the EPA must be obtained and the opportunity for public participation must be provided during the exceptions review process. The general criteria of these standards shall apply to all water bodies classified as a water body exception except where a particular water body is specifically exempted. A use attainability analysis may be conducted to gather data

necessary to justify a water body exception classification. If such a classification is justified, applicable water uses and water quality criteria will be established. Exceptions are allowed for the following three categories of water bodies.

C.1. - J.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:746 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:966 (October 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2546 (November 2000), LR 29:557 (April 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 33:457 (March 2007), LR 33:828 (May 2007).

### §1111. Water Use Designations

A. There are seven water uses designated for surface waters in Louisiana: agriculture, drinking water supply, fish and wildlife propagation, outstanding natural resource waters, oyster propagation, primary contact recreation, and secondary contact recreation. Designated uses assigned to a subsegment apply to all water bodies (listed water body and tributaries/distributaries of the listed water body) contained in that subsegment unless unique chemical, physical, and/or biological conditions preclude such uses. However, the designated uses of drinking water supply, outstanding natural resource waters, and/or oyster propagation apply only to the water bodies specifically so designated in LAC 33:IX.1123, Table 3, and not to any tributaries or distributaries to such water bodies. The water use designations are defined as follows.

*Agriculture*—the use of water for crop spraying, irrigation, livestock watering, poultry operations, and other farm purposes not related to human consumption.

*Drinking Water Supply*—the use of water for human consumption and general household use. Surface waters designated as drinking water supplies are specifically so designated in LAC 33:IX.1123, Table 3; this designation does not apply to their tributaries or distributaries unless so specified.

*Fish and Wildlife Propagation*—the use of water for aquatic habitat, food, resting, reproduction, cover, and/or travel corridors for any indigenous wildlife and aquatic life species associated with the aquatic environment. This use also includes the maintenance of water quality at a level that prevents damage to indigenous wildlife and aquatic life species associated with the aquatic environment and contamination of aquatic biota consumed by humans. The use subcategory of *limited aquatic life and wildlife* recognizes the natural variability of aquatic habitats, community requirements, and local environmental conditions. *Limited aquatic life and wildlife* use may be designated for water bodies having habitat that is uniform in structure and morphology, with most of the regionally expected aquatic species absent, low species diversity and richness, and/or a severely imbalanced trophic structure. Aquatic life able to survive and/or propagate in such water bodies includes species tolerant of severe or variable environmental conditions. Water bodies that might qualify for the *limited aquatic life and wildlife* use subcategory include intermittent streams, and naturally dystrophic and man-made water bodies with characteristics including, but

not limited to, irreversible hydrologic modification, anthropogenically and irreversibly degraded water quality, uniform channel morphology, lack of channel structure, uniform substrate, lack of riparian structure, and similar characteristics making the available habitat for aquatic life and wildlife suboptimal.

*Outstanding Natural Resource Waters*—water bodies designated for preservation, protection, reclamation, or enhancement of wilderness, aesthetic qualities, and ecological regimes, such as those designated under the Louisiana Natural and Scenic Rivers System or those designated by the department as waters of ecological significance. Characteristics of *outstanding natural resource waters* include, but are not limited to, highly diverse or unique instream and/or riparian habitat, high species diversity, balanced trophic structure, unique species, or similar qualities. This use designation shall apply only to those water bodies specifically so designated in LAC 33:IX.1123, Table 3 and not to their tributaries or distributaries unless so specified.

*Oyster Propagation*—the use of water to maintain biological systems that support economically important species of oysters, clams, mussels, or other mollusks so that their productivity is preserved and the health of human consumers of these species is protected. This use designation shall apply only to those water bodies specifically so designated in LAC 33:IX.1123, Table 3 and not to their tributaries or distributaries unless so specified.

*Primary Contact Recreation*—any recreational or other water contact activity involving prolonged or regular full-body contact with the water and in which the probability of ingesting appreciable amounts of water is considerable. Examples of this type of water use include swimming, skiing, and diving.

*Secondary Contact Recreation*—any recreational or other water contact activity in which prolonged or regular full-body contact with the water is either incidental or accidental, and the probability of ingesting appreciable amounts of water is minimal. Examples of this type of water use include fishing, wading, and boating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division LR 25:2401

(December 1999), LR 26:2546 (November 2000), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:828 (May 2007).

**§1113. Criteria**

A. - C.6.a. ...

b. The criteria for protection of aquatic life are based on acute and chronic concentrations in fresh and marine waters (see LAC 33:IX.1105) as specified in the EPA criteria documents and are developed primarily for attainment of the fish and wildlife propagation use. Where a specific numerical criterion is not derived in EPA criteria documents, a criterion is developed by applying an appropriate application factor for acute and chronic effects to the lowest LC50 value for a representative Louisiana species. The application of either freshwater toxics criteria or marine toxics criteria in brackish waters will be determined by the average salinity of the water body (see LAC 33:IX.1105). In cases where the average salinity is 2 parts per thousand or greater and less than 10 parts per thousand, the more stringent criteria will be used unless an alternative site-specific criterion is developed (as described in EPA-822-R-02-047, November 2002).

c. ...

d. Metals criteria are based on dissolved metals concentrations in ambient waters. Hardness values are averaged from two-year data compilations contained in the latest Louisiana Water Quality Data Summary or other comparable data compilations or reports. Metals criteria have been developed for both fresh and marine waters, but not brackish waters. The application of either freshwater metals criteria or marine metals criteria in brackish waters will be determined by the average salinity of the water body (see LAC 33:IX.1105). In cases where the average salinity is 2 parts per thousand or greater and less than 10 parts per thousand, the more stringent criteria will be used unless an alternative site-specific criterion is developed (as described in EPA-822-R-02-047, November 2002).

e. ...

f. The use of clean techniques may be required to definitively assess ambient levels of some pollutants (e.g., EPA Method 1669 for metals) or to assess such pollutants when numeric or narrative water quality standards are not being attained. *Clean techniques* are defined in LAC 33:IX.1105.

**Table 1**  
**Numerical Criteria for Specific Toxic Substances**  
**(In micrograms per liter (µg/L) )**

Toxic Substance	Aquatic Life Protection						Human Health Protection	
	Freshwater		Marine Water		Brackish Water		Drinking Water Supply <sup>1</sup>	Non-Drinking Water Supply <sup>2</sup>
	Acute	Chronic	Acute	Chronic	Acute	Chronic		
Aldrin	3.00	--	1,300	--	1,300	--	4x10 <sup>-5</sup>	4x10 <sup>-5</sup>
Benzene	2,249	1,125	2,700	1,350	2,249	1,125	0.58	6.59
Benzidine	250	125	--	--	250	125	8x10 <sup>-5</sup>	1.7x10 <sup>-4</sup>
Bromodichloromethane	--	--	--	--	--	--	0.52	6.884
Bromoform (Tribromomethane)	2,930	1,465	1,790	895	1790	895	3.9	34.7
Carbon Tetrachloride (Tetrachloromethane)	2,730	1,365	15,000	7,500	2,730	1,365	0.22	1.2
Chlordane	2.40	0.0043	0.090	0.0040	.090	0.0040	1.9x10 <sup>-4</sup>	1.9x10 <sup>-4</sup>
Chloroform (Trichloromethane)	2,890	1,445	8,150	4,075	2,890	1,445	5.3	70
2-Chlorophenol	258	129	--	--	258	129	0.10	126.4



**Table 1**  
**Numerical Criteria for Specific Toxic Substances**  
**(In micrograms per liter (µg/L) )**

Toxic Substance	Aquatic Life Protection						Human Health Protection	
	Freshwater		Marine Water		Brackish Water		Drinking Water Supply <sup>1</sup>	Non-Drinking Water Supply <sup>2</sup>
	Acute	Chronic	Acute	Chronic	Acute	Chronic		
3-Chlorophenol	--	--	--	--	--	--	0.10	--
4-Chlorophenol	383	192	535	268	383	192	0.10	--
Cyanide	45.9	5.4	1.0	--	1.0	--	663.8	12,844
DDE	52.5	10.5000	0.700	0.1400	0.700	0.1400	1.9x10 <sup>-4</sup>	1.9x10 <sup>-4</sup>
DDT	1.10	0.0010	0.130	0.0010	0.130	0.0010	1.9x10 <sup>-4</sup>	1.9x10 <sup>-4</sup>
Dibromochloromethane	--	--	--	--	--	--	0.39	5.08
1,2-Dichloroethane (EDC)	11,800	5,900	11,300	5,650	11,300	5,650	0.36	6.8
1,1-Dichloroethylene	1,160	580	22,400	11,200	1,160	580	0.05	0.58
2,4-Dichlorophenoxyacetic acid (2,4-D)	--	--	--	--	--	--	100.00	--
2,3-Dichlorophenol	--	--	--	--	--	--	0.04	--
2,4-Dichlorophenol	202	101	--	--	202	101	0.30	232.6
2,5-Dichlorophenol	--	--	--	--	--	--	0.50	--
2,6-Dichlorophenol	--	--	--	--	--	--	0.20	--
3,4-Dichlorophenol	--	--	--	--	--	--	0.30	--
1,3-Dichloropropene	606	303	79	39.5	79	39.5	0.33	5.51
Dieldrin	0.2374	0.0557	0.710	0.0019	0.2374	0.0019	5x10 <sup>-5</sup>	5x10 <sup>-5</sup>
Endosulfan	0.22	0.0560	0.034	0.0087	0.034	0.0087	0.47	0.64
Endrin	0.0864	0.0375	0.037	0.0023	0.037	0.0023	0.26	0.26
Ethylbenzene	3,200	1,600	8,760	4,380	3,200	1,600	247	834
Heptachlor	0.52	0.0038	0.053	0.0036	0.053	0.0036	7x10 <sup>-5</sup>	7x10 <sup>-5</sup>
Hexachlorobenzene	--	--	--	--	--	--	2.5x10 <sup>-4</sup>	2.5x10 <sup>-4</sup>
Hexachlorobutadiene <sup>3</sup>	5.1	1.02	1.6	0.32	1.6	0.32	0.09	0.11
Hexachlorocyclohexane (gamma BHC; Lindane)	5.30	0.21	0.160	--	0.160	--	0.11	0.20
Methyl chloride (Chloromethane)	55,000	27,500	27,000	13,500	27,000	13,500	--	--
Methylene chloride (Dichloromethane)	19,300	9,650	25,600	12,800	19,300	9,650	4.4	87
Phenol (Total) <sup>4</sup>	700	350	580	290	580	290	5.00	50.0
Polychlorinated Biphenyls, Total (PCBs)	2.00	0.0140	10.000	0.0300	2.00	0.0140	5.59x10 <sup>-5</sup>	5.61x10 <sup>-5</sup>
TDE (DDD)	0.03	0.0060	1.250	0.2500	0.03	0.0060	2.7x10 <sup>-4</sup>	2.7x10 <sup>-4</sup>
2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) <sup>5</sup>	--	--	--	--	--	--	0.71x10 <sup>-6</sup>	0.72x10 <sup>-6</sup>
1,1,2,2-Tetrachloroethane	932	466	902	451	902	451	0.16	1.8
Tetrachloroethylene	1,290	645	1,020	510	1,020	510	0.65	2.5
Toluene	1,270	635	950	475	950	475	6,100	46,200
Toxaphene	0.73	0.0002	0.210	0.0002	0.210	0.0002	2.4x10 <sup>-4</sup>	2.4x10 <sup>-4</sup>
1,1,1-Trichloroethane	5,280	2,640	3,120	1,560	3,120	1,560	200.0	--
1,1,2-Trichloroethane	1,800	900	--	--	1,800	900	0.56	6.9
Trichloroethylene	3,900	1,950	200	100	200	100	2.8	21
2-(2,4,5-Trichlorophenoxy) propionic acid (2,4,5-TP; Silvex)	--	--	--	--	--	--	10.00	--
Vinyl Chloride (Chloroethylene)	--	--	--	--	--	--	2.37x10 <sup>-2</sup>	0.45

<sup>1</sup> Applies to surface water bodies designated as a Drinking Water Supply and also protects for primary and secondary contact recreation and fish consumption.

<sup>2</sup> Applies to surface water bodies not designated as a Drinking Water Supply and protects for primary and secondary contact recreation and fish consumption.

<sup>3</sup> Includes Hexachloro-1,3-butadiene.

<sup>4</sup> Total phenol as measured by the 4-aminoantipyrine (4AAP) method.

<sup>5</sup> Advances in scientific knowledge concerning the toxicity, cancer potency, metabolism, or exposure pathways of toxic pollutants that affect the assumptions on which existing criteria are based may necessitate a revision of dioxin numerical criteria at any time. Such revisions, however, will be accomplished only after proper consideration of designated water uses. Any proposed revision will be consistent with state and federal regulations.

**Table 1A  
Numerical Criteria for Metals and Inorganics  
(In micrograms per liter (µg/L) or parts per billion (ppb))**

Toxic Substance	Aquatic Life Protection						Human Health Protection
	Freshwater		Marine Water		Brackish Water <sup>f</sup>		Drinking Water Supply <sup>a</sup>
	Acute	Chronic	Acute	Chronic	Acute	Chronic	
Arsenic <sup>c</sup>	339.8	150	69.00	36.00	69	36	10.0
Chromium III (Tri) <sup>b,c</sup>	Acute: $e^{(0.8190[\ln(\text{hardness})] + 3.6880)} \times 0.316$ Chronic: $e^{(0.8190[\ln(\text{hardness})] + 1.5610)} \times 0.86$		515.00	103.00	*	*	50.0
Chromium VI (Hex) <sup>c</sup>	16	11	1,100	50.00	16	11	50.0
Zinc <sup>b,c</sup>	Acute: $e^{(0.8473[\ln(\text{hardness})] + 0.8604)} \times 0.978$ Chronic: $e^{(0.8473[\ln(\text{hardness})] + 0.7614)} \times 0.986$		90	81	*	*	5,000
Cadmium <sup>b,c</sup>	Acute: $e^{(1.1280[\ln(\text{hardness})] - 1.6774)} \times (1.136672 - [\ln(\text{hardness})(0.041838)])$ Chronic: $e^{(0.7852[\ln(\text{hardness})] - 3.4900)} \times (1.101672 - [\ln(\text{hardness})(0.041838)])$		45.35	10.00	*	*	10.0
Copper <sup>b,c</sup>	Acute: $e^{(0.9422[\ln(\text{hardness})] - 1.3844)} \times 0.960$ Chronic: $e^{(0.8545[\ln(\text{hardness})] - 1.3860)} \times 0.960$		3.63	3.63	*	*	1000
Lead <sup>b,c</sup>	Acute: $e^{(1.2730[\ln(\text{hardness})] - 1.4600)} \times (1.46203 - [\ln(\text{hardness})(0.145712)])$ Chronic: $e^{(1.2730[\ln(\text{hardness})] - 4.7050)} \times (1.46203 - [\ln(\text{hardness})(0.145712)])$		209	8.08	*	*	50.0
Mercury <sup>c</sup>	2.04 <sup>d</sup>	0.012 <sup>e</sup>	2 <sup>d</sup>	0.025 <sup>e</sup>	2 <sup>d</sup>	0.012 <sup>e</sup>	2.0
Nickel <sup>b,c</sup>	Acute: $e^{(0.8460[\ln(\text{hardness})] + 3.3612)} \times 0.998$ Chronic: $e^{(0.8460[\ln(\text{hardness})] + 1.1645)} \times 0.997$		74	8.2	*	*	--

\* For hardness-dependent criteria, values are calculated using average hardness (mg/L CaCO<sub>3</sub>) from two-year data compilations contained in the latest Louisiana Water Quality Data Summary or other comparable data compilations or reports, as described in LAC 33:IX.1113.C.6.

<sup>a</sup> Applies to surface water bodies designated as Drinking Water Supply and also protects for primary and secondary contact recreation and fish consumption.

<sup>b</sup> Hardness-dependent criteria for freshwater are based on the natural logarithm formulas multiplied by conversion factors (CF) for acute and chronic protection. The minimum and maximum hardness values used for criteria calculation are 25 mg/L and 400 mg/L CaCO<sub>3</sub>, as specified in 40 CFR 131.36.

<sup>c</sup> Freshwater and saltwater metals criteria are expressed in terms of the dissolved metal in the water column. The standard was calculated by multiplying the previous water quality criteria by a conversion factor (CF). The CF represents the EPA-recommended conversion factors found in EPA-822-R-02-047, November 2002.

<sup>d</sup> Conversion factor is from: Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria, October 1, 1993. Factors were expressed to two decimal places.

<sup>e</sup> It is not appropriate to apply CF to chronic value for mercury because it is based on mercury residues in aquatic organisms rather than toxicity.

<sup>f</sup> According to LAC 33:IX.1113.C.6.d, the most stringent criteria (freshwater or marine) will be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), LR 24:688 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2402 (December 1999), LR 26:2547 (November 2000), LR 27:289 (March 2001), LR 30:1474 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:457 (March 2007), LR 33:829 (May 2007).

**§1115. Application of Standards**

A. - A.1. ...

2. An established water quality value (criterion) represents the general or numerical concentration limit or characteristic of a constituent in a water body segment that is allowed by the state. For some toxic substances, however, criteria provide both acute and chronic limits for the protection of aquatic life in fresh and marine waters, and separate limits for the protection of human health. Criteria apply at all times, except where natural conditions cause them to be exceeded or where specific exemptions in the standards apply. Water uses, pollution sources, natural conditions, and the water quality criteria are all considered in the department's determination of appropriate permit limits for each wastewater discharge to a water body.

A.3. - C.7.c. ...

8. For chloride, sulfate, and total dissolved solids, criteria are to be met below the point of discharge after complete mixing. Because criteria are developed over a long-term period, harmonic mean flow will be applied for mixing.

9. - Table 2b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2403 (December 1999), LR 26:2548 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:831 (May 2007).

**§1119. Implementation Plan for Antidegradation Policy**

A. - A.2. ...

B. Implementation of Louisiana's Water Quality Management Process

1. Procedures and methods by which the Antidegradation Policy is implemented are described in several documents produced under the Water Quality Management (WQM) Process ("The Water Quality Standards (WQS)," "The Water Quality Integrated Report," and "The Continuing Planning Process"). These documents are available from the department.

2. ...

a. The state establishes the water quality standards specified in this Chapter to reflect the goals for individual water bodies and provide the legal basis for antidegradation and for water pollution control. This Chapter also defines and designates water uses and criteria to protect them.

b. ...

c. Water quality monitoring data and water body conditions are continually assessed to identify problem areas and assist in the development of water quality management plans and standards. The biennial Louisiana Water Quality Integrated Report is the state's principal tool in water quality assessment and identifies areas of water quality degradation.

B.2.d. - C.2. ...

3. If the public has not been informed of the possible lowering of water quality and has had no opportunity to comment on it, then the state shall ensure that the public is provided that opportunity. In the case of state or federal wastewater discharge permits, this may be accomplished by including notice of the possible lowering of water quality in the public notice of the permit. If the location and load proposed in the discharge permit has been previously reviewed by the public as part of the water quality management plan, additional public notice is not required. When public notice of the permit is required, the following language will be included.

"During the preparation of this permit, it has been determined that this discharge will have no adverse impact on the existing uses of the receiving water body. As with any discharge, however, some change in existing water quality may occur."

4. If a wastewater discharge or activity is proposed for an outstanding natural resource water body, as defined by this Chapter, the administrative authority shall not approve that activity if it will cause degradation of these waters. For these purposes, *degradation* is defined as a statistically significant difference at the 90 percent confidence interval from existing physical, chemical, and biological conditions. Existing discharges of treated sanitary wastewater may be allowed if no reasonable alternative discharge location is available or if the discharge existed before the designation as an outstanding natural resource water body.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2548 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:831 (May 2007).

**§1121. Regulation of Toxic Substances Based on the General Criteria**

A. - A.2. ...

B. Effluent Characterization/Toxicity Testing and/or Instream Assessment

1. When determining the need for limits based on water quality, the Office of Environmental Services, Water Permits Division, may identify data needs and request that the permittee submit additional data along with the application. Permits may be placed into three categories:

1.a. - 3.b.iii.(c). ...

4. For water bodies whose designated use is as a drinking water supply, the department will calculate the in-stream concentration for all discharged pollutants for which EPA has promulgated a maximum contaminant level (MCL). The permittee will be required to submit to the Office of Environmental Services, Water Permits Division, sufficient effluent characterization data to make these calculations. Where dilution calculations indicate that in-stream concentrations may exceed the MCL requirements at appropriate flow conditions, the permittee may be required to conduct in-stream chemical monitoring or monitoring at the water supply.

5. To protect human health by eliminating chronic exposure to potentially toxic amounts of pollutants from aquatic species consumed by humans, the department will calculate the in-stream concentrations of all applicable pollutants for which EPA has published human health criteria in the Quality Criteria for Water, 1986, EPA 440/5-86-001, or subsequent revisions. The permittee will be required to submit to the Office of Environmental Services, Water Permits Division, sufficient effluent characterization data to make these calculations. For operational considerations, if dilution calculations show that after mixing, a suspected carcinogen would be present in the receiving water body at a concentration associated with a 10<sup>-6</sup> risk level, in-stream chemical monitoring may be required of the appropriate dischargers. The department will list the water body as a priority water body and develop a wasteload allocation or make other consideration for it.

C. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2404 (December 1999), LR 26:2548 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2507 (October 2005), LR 33:832 (May 2007).

**§1123. Numerical Criteria and Designated Uses**

A. Designated Water Quality Management Basins

Basin Name	Basin Number
Atchafalaya River Basin	01
Barataria Basin	02
Calcasieu River Basin	03
Lake Pontchartrain Basin	04
Mermentau River Basin	05
Vermilion-Teche River Basin	06
Mississippi River Basin	07
Ouachita River Basin	08
Pearl River Basin	09
Red River Basin	10
Sabine River Basin	11
Terrebonne Basin	12

B. Explanation of Water Body Code Number. The water body subsegment number and unique water body identification code are designated as follows:

AABBCC-XXX

where:

AA = Water Quality Management Basin Number

BB = Segment Number

CC = Subsegment Number

XXX = A minimum of three digits Unique Water Body Identification Code (If a Unique Water Body Identification Code is not identified for a particular Subsegment, then all water bodies within that Subsegment have the same designated uses and numerical criteria.)

Example:

090207-5112 = Water Body Subsegment and Identification Code for Morgan Bayou

where:

09 = Pearl River Management Basin

0902 = Segment 0902 of the Pearl River Management Basin

090207 = Subsegment 090207 of Pearl River Management Basin Segment 02

5112 = Four-digit Unique Water Body Identification Code for Morgan Bayou

C. Numerical Criteria Unit Definitions

1. Parameter Abbreviations. The following abbreviations of water quality parameters are used in Table 3 under the subheading "Numerical Criteria."

Abbreviation	Parameter
CL	Chlorides in mg/L
SO <sub>4</sub>	Sulfates in mg/L
DO	Dissolved Oxygen in mg/L
pH	Range of pH Units
BAC	Bacterial Criteria (See Below)
°C	Temperature in Degrees Centigrade (°C)
TDS	Total Dissolved Solids in mg/L
N/A	Not Available at Present

2. Bacterial Criteria (BAC)

a. The code numbers associated with the following designated uses are used in Table 3 under the Numerical Criteria subheading "BAC."

Code	Designated Use
1	Primary Contact Recreation
2	Secondary Contact Recreation
3	Drinking Water Supply
4	Oyster Propagation

b. The code number identified under the Numerical Criteria subheading "BAC" in Table 3 represents the most stringent bacterial criteria that apply to each individual subsegment. Where applicable, additional less stringent bacterial criteria also apply, depending on the designated uses of the subsegment. The specified numeric bacterial criteria for each designated use listed in this Paragraph can be found in LAC 33:IX.1113.C.

D. Designated Uses. The following notations for water use designations are used in Table 3 under the subheading "Designated Uses."

Notation	Designated Use
A	Primary Contact Recreation
B	Secondary Contact Recreation
C	Fish and Wildlife Propagation
L	Limited Aquatic Life and Wildlife Use
D	Drinking Water Supply
E	Oyster Propagation
F	Agriculture
G	Outstanding Natural Resource Waters

E. Endnotes. Numbers in brackets, e.g. [1], in Table 3 refer to endnotes listed at the end of the table.

Table 3. Numerical Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
<b>Atchafalaya River Basin (01)</b>									
010101	Atchafalaya River Headwaters and Floodplain—From Old River Control Structure to Simmesport; includes Old River Diversion Channel, Lower Red River, Lower Old River	A B C	65	70	5.0	6.5-8.5	1	33	440
010201	Atchafalaya River Mainstem—From Simmesport to Whiskey Bay Pilot Channel at mile 54	A B C D	65	70	5.0	6.5-8.5	1	33	440
010301	West Atchafalaya Basin Floodway—From Simmesport to Butte LaRose Bay and Henderson Lake	A B C	65	70	5.0	6.5-8.5	1	33	440
010401	East Atchafalaya Basin and Morganza Floodway South to I-10 Canal	A B C	65	70	5.0	6.5-8.5	1	33	440
010501	Lower Atchafalaya Basin Floodway—From Whiskey Bay Pilot Channel at mile 54 to US-90 bridge in Morgan City; includes Grand Lake and Six-Mile Lake	A B C D	65	70	5.0	6.5-8.5	1	33	440
010502	Intracoastal Waterway (ICWW)—Morgan City-Port Allen Route from Bayou Sorrel Lock to Morgan City	A B C D	65	70	5.0	6.5-8.5	1	33	440
010601	Crow Bayou, Bayou Blue, and Tributaries	A B C	80	50	5.0	6.0-8.5	1	32	350
010701	Bayou Teche—From Berwick to Wax Lake Outlet	A B C D	80	50	5.0	6.0-8.5	1	32	350
010801	Atchafalaya River—From ICWW south of Morgan City to Atchafalaya Bay; includes Sweetwater Lake and Bayou Shaffer	A B C	500	150	5.0	6.5-9.0	1	35	1,000
010802	Wax Lake Outlet—From US-90 bridge to Atchafalaya Bay; includes Wax Lake	A B C	500	150	5.0	6.5-9.0	1	35	1,000
010803	Intracoastal Waterway—From Bayou Boeuf Lock to Bayou Sale; includes Wax Lake Outlet to US-90	A B C	65	70	5.0	6.0-8.5	1	32	440
010901	Atchafalaya Bay and Delta and Gulf Waters to the State three-mile limit	A B C E	N/A	N/A	5.0	6.5-9.0	4	32	N/A

**Table 3. Numerical Criteria and Designated Uses**

**A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters**

Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
<b>Barataria Basin (02)</b>									
020101	Bayou Verret, Bayou Chevreuil, Bayou Citamon, and Grand Bayou	A B C F	65	50	5.0	6.0-8.5	1	32	430
020102	Bayou Boeuf, Halpin Canal, and Theriot Canal	A B C F	500	150	5.0	6.0-8.5	1	32	1,000
020103	Lake Boeuf	A B C	500	150	5.0	6.0-8.5	1	32	1,000
020201	Bayou Des Allemands--From Lac Des Allemands to old US-90 (Scenic)	A B C G	600	100	5.0	6.0-8.5	1	32	1,320
020202	Lac Des Allemands	A B C	600	100	5.0	6.0-8.5	1	32	1,320
020301	Bayou Des Allemands--From US-90 to Lake Salvador (Scenic)	A B C G	600	100	5.0	6.0-8.5	1	32	1,320
020302	Bayou Gauche	A B C	600	100	5.0	6.0-8.5	1	32	1,320
020303	Lake Cataouatche and Tributaries	A B C	500	150	5.0	6.0-8.5	1	32	1,000
020303-001	Luling Wetland--Forested wetland located 1.8 miles south of US-90 at Luling, east of the Luling wastewater treatment pond, bordered by Cousin Canal to the west and Louisiana Cypress Lumber Canal to the south	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
020304	Lake Salvador	A B C	600	100	5.0	6.0-8.5	1	32	1,320
020401	Bayou Lafourche--From Donaldsonville to ICWW at Larose	A B C D	70	55	5.0	6.0-8.5	1	32	500
020402	Bayou Lafourche--From ICWW at Larose to Yankee Canal (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	32	N/A
020403	Bayou Lafourche--From Yankee Canal and saltwater barrier to Gulf of Mexico (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	32	N/A
020501	Sauls, Avondale, and Main Canals	A B C	65	50	5.0	6.0-8.5	1	32	430
020601	Intracoastal Waterway--From Bayou Villars to Mississippi River (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
020701	Bayou Segnette--From headwaters to Bayou Villars	A B C	600	100	5.0	6.0-8.5	1	32	1,320
020801	Intracoastal Waterway--From Larose to Bayou Villars and Bayou Barataria (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
020802	Bayou Barataria and Barataria Waterway--From ICWW to Bayou Rigolettes (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
020901	Bayou Rigolettes and Bayou Perot to Little Lake (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
020902	Little Lake (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
020903	Barataria Waterway (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
020904	Wilkinson Canal and Wilkinson Bayou (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
020905	Bayou Moreau (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
020906	Bay Rambo (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
020907	Bay Sansbois, Lake Judge Perez, and Bay De La Cheniere (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
021001	Lake Washington, Bastian Bay, Adams Bay, Scofield Bay, Coquette Bay, Tambour Bay, Spanish Pass, and Bay Jacques (Estuarine)	A B C E	N/A	N/A	4.0	6.5-8.5	4	35	N/A
021101	Barataria Bay; includes Caminada Bay, Hackberry Bay, Bay Batiste, and Bay Long (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
021102	Barataria Basin Coastal Bays and Gulf Waters to the State three-mile limit	A B C E	N/A	N/A	5.0	6.5-9.0	4	32	N/A
<b>Calcasieu River Basin (03)</b>									
030101	Calcasieu River--From headwaters to LA-8	A B C F	65	35	5.0	6.0-8.5	1	32	225
030102	Calcasieu River--From LA-8 to the Rapides-Allen Parish line (Scenic)	A B C F G	65	35	5.0	6.0-8.5	1	32	225
030103	Calcasieu River--From Rapides-Allen Parish line to Marsh Bayou (Scenic) [10]	A B C F G-[10]	65	35	5.0	6.0-8.5	1	32	225
030103-04075	Kinder Ditch--From headwaters of unnamed tributary to confluence with Calcasieu River	B C	65	35	3.0	6.0-8.5	1	32	225
030104	Mill Creek--From headwaters to Calcasieu River	A B C	60	60	5.0	6.0-8.5	1	32	250
030201	Calcasieu River--From Marsh Bayou to saltwater barrier (Scenic) [11]	A B C F G-[11]	350	40	[1]	6.0-8.5	1	32	500
030301	Calcasieu River and Ship Channel--From saltwater barrier to Moss Lake; includes Ship Channel, Coon Island Loop, and Clooney Island Loop (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	35	N/A
030302	Lake Charles	A B C	N/A	N/A	5.0	6.0-8.5	1	35	N/A
030303	Prien Lake	A B C	N/A	N/A	5.0	6.0-8.5	1	35	N/A
030304	Moss Lake (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	35	N/A
030305	Contraband Bayou (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	35	N/A
030306	Bayou Verdine (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	35	N/A
030401	Calcasieu River--From below Moss Lake to the Gulf of Mexico; includes Ship Channel and Monkey Island Loop (Estuarine)	A B C E	N/A	N/A	4.0	6.0-8.5	4	35	N/A
030402	Calcasieu Lake	A B C E	N/A	N/A	5.0	6.0-8.5	4	32	N/A
030403	Black Lake (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	35	N/A
030501	Whiskey Chitto Creek--From headwaters to southern boundary of Fort Polk Military Reservation	A B C	20	20	5.0	6.0-8.5	1	30	150

**Table 3. Numerical Criteria and Designated Uses**

**A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters**

Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
030502	Whiskey Chitto Creek—From the southern boundary of Fort Polk Military Reservation to the Calcasieu River (Scenic)	A B C G	20	20	5.0	6.0-8.5	1	30	150
030503	Six Mile Creek—East and West Forks from headwaters to the southern boundary of Fort Polk Military Reservation	A B C	20	20	5.0	6.0-8.5	1	30	150
030504	Six Mile Creek—East and West Forks from the southern boundary of Fort Polk Military Reservation to Whiskey Chitto Creek (Scenic)	A B C G	20	20	5.0	6.0-8.5	1	30	150
030505	Ten Mile Creek—From headwaters to Whiskey Chitto Creek (Scenic)	A B C G	20	20	5.0	6.0-8.5	1	30	150
030506	Bundicks Creek—From headwaters to Bundicks Lake	A B C	20	20	5.0	6.0-8.5	1	30	150
030507	Bundicks Lake	A B C	20	20	5.0	6.0-8.5	1	30	150
030508	Bundicks Creek—From Bundicks Lake to Whiskey Chitto Creek	A B C	20	20	5.0	6.0-8.5	1	30	150
030601	Barnes Creek—From headwaters to Little Barnes Creek	B C	60	60	[2]	6.0-8.5	2	30	150
030602	Barnes Creek—From Little Barnes Creek to Calcasieu River	A B C	60	60	5.0	6.0-8.5	1	32	250
030603	Marsh Bayou—From headwaters to Calcasieu River	A B C	60	60	5.0	6.0-8.5	1	32	250
030701	Bayou Serpent	A B C F	250	75	5.0	6.0-8.5	1	32	300
030702	English Bayou—From headwaters to Calcasieu River	A B C F	250	75	[3]	6.0-8.5	1	32	300
030801	West Fork Calcasieu River—From confluence with Beckwith Creek and Hickory Branch to mainstem of Calcasieu River	A B C F	250	75	[3]	6.0-8.5	1	34	500
030802	Hickory Branch—From headwaters to West Fork Calcasieu River	A B C F	250	75	5.0	6.0-8.5	1	32	500
030803	Beckwith Creek—From headwaters to West Fork Calcasieu River	A B C F	25	25	5.0	6.0-8.5	1	32	100
030804	Little River—From headwaters to West Fork Calcasieu River	A B C	250	75	[3]	6.0-8.5	1	34	500
030805	Indian Bayou—From headwaters to West Fork Calcasieu River	A B C F	250	75	[3]	6.0-8.5	1	34	500
030806	Houston River—From Bear Head Creek at LA-12 to West Fork Calcasieu River	A B C F	250	75	[3]	6.0-8.5	1	32	500
030806-554700	Houston River Canal—From one mile west of LA-388 to Houston River	A B C D F	250	75	[3]	6.0-8.5	1	32	500
030807	Bear Head Creek—From headwaters to Houston River at LA-12	A B C	250	75	5.0	6.0-8.5	1	32	500
030901	Bayou D'Inde—From headwaters to Calcasieu River (Estuarine)	A B C	N/A	N/A	4.0	6.5-8.5	1	35	N/A
031001	Bayou Choupique—From headwaters to ICWW (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	35	N/A
031002	Intracoastal Waterway—From West Calcasieu River Basin boundary to Calcasieu Lock (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	35	N/A
031101	Intracoastal Waterway—From Calcasieu Lock to East Calcasieu River Basin boundary	A B C	250	75	5.0	6.5-9.0	1	32	500
031201	Calcasieu River Basin Coastal Bays and Gulf Waters to the State three-mile limit	A B C E	N/A	N/A	5.0	6.0-9.0	4	32	N/A
<b>Lake Pontchartrain Basin (04)</b>									
040101	Comite River—From Little Comite Creek and Comite Creek at Mississippi state line to Wilson-Clinton Hwy.	A B C	25	10	5.0	6.0-8.5	1	32	150
040102	Comite River—From Wilson-Clinton Hwy. to White Bayou (Scenic)	A B C G	25	10	5.0	6.0-8.5	1	32	150
040103	Comite River—From White Bayou to Amite River	A B C	25	10	5.0	6.0-8.5	1	32	150
040201	Bayou Manchac—From headwaters to Amite River	A B C	25	10	5.0	6.0-8.5	1	32	150
040301	Amite River—From Mississippi state line to LA-37 (Scenic)	A B C G	25	10	5.0	6.0-8.5	1	32	150
040302	Amite River—From LA-37 to Amite River Diversion Canal	A B C	25	10	5.0	6.0-8.5	1	32	150
040303	Amite River—From Amite River Diversion Canal to Lake Maurepas	A B C	25	10	5.0	6.0-8.5	1	32	150
040304	Grays Creek—From headwaters to Amite River	A B C	25	10	5.0	6.0-8.5	1	32	150
040305	Colyell Creek; includes tributaries and Colyell Bay	A B C	25	10	5.0	6.0-8.5	1	32	150
040401	Blind River—From Amite River Diversion Canal to mouth at Lake Maurepas (Scenic)	A B C G	250	75	4.0 [9]	6.0-8.5	1	30	500
040402	Amite River Diversion Canal—From Amite River to Blind River	A B C	25	10	5.0	6.0-8.5	1	32	150
040403	Blind River—From headwaters to Amite River Diversion Canal (Scenic)	A B C G	250	75	3.0 [9]	6.0-8.5	1	30	500
040404	New River—From headwaters to New River Canal	A B C	250	75	5.0	6.0-8.5	1	30	500
040501	Tickfaw River—From Mississippi state line to LA-42 (Scenic)	A B C G	10	5	5.0	6.0-8.5	1	30	55
040502	Tickfaw River—From LA-42 to Lake Maurepas	A B C	10	5	5.0	6.0-8.5	1	30	55
040503	Natalbany River—From headwaters to Tickfaw River	A B C	30	20	5.0	6.0-8.5	1	30	150
040504	Yellow Water River—From headwaters to Ponchatoula Creek	A B C	30	20	5.0	6.0-8.5	1	30	150
040505	Ponchatoula Creek and Ponchatoula River	A B C	30	20	5.0	6.0-8.5	1	30	150
040601	Pass Manchac—From Lake Maurepas to Lake Pontchartrain	A B C	1,600	200	5.0	6.5-9.0	1	32	3,000
040602	Lake Maurepas	A B C	1,600	200	5.0	6.0-8.5	1	32	3,000
040603	Selsers Creek—From headwaters to South Slough	A B C	30	20	5.0	6.0-8.5	1	30	150
040604	South Slough; includes Anderson Canal to I-55 borrow pit	A B C	30	20	5.0	6.0-8.5	1	30	150
040604-001	South Slough Wetland—Forested freshwater and brackish marsh located 1.4 miles south of Ponchatoula, directly east of I-55,	B C	[23]	[23]	[23]	[23]	2	[23]	[23]

**Table 3. Numerical Criteria and Designated Uses**

**A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters**

Code	Stream Description	Designated Uses	Numerical Criteria							
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS	
	extending to North Pass to the south and Tangipahoa River to the east									
040701	Tangipahoa River-From Mississippi state line to I-12 (Scenic)	A B C G	30	10	5.0	6.0-8.5	1	30	140	
040702	Tangipahoa River-From I-12 to Lake Pontchartrain	A B C	30	10	5.0	6.0-8.5	1	30	140	
040703	Big Creek-From headwaters to Tangipahoa River	A B C	20	20	5.0	6.0-8.5	1	30	140	
040704	Chappepeela Creek-From LA-1062 to Tangipahoa River	A B C G	20	20	5.0	6.0-8.5	1	30	140	
040801	Tchefuncte River-From headwaters to Bogue Falaya River; includes tributaries (Scenic)	A B C G	20	10	5.0	6.0-8.5	1	30	110	
040802	Tchefuncte River-From Bogue Falaya River to LA-22 (Scenic)	A B C G	850	135	5.0	6.0-8.5	1	30	1,850	
040803	Tchefuncte River-From LA-22 to Lake Pontchartrain (Estuarine)	A B C	850	135	4.0	6.0-8.5	1	30	1,850	
040804	Bogue Falaya River-From headwaters to Tchefuncte River (Scenic) [12]	A B C G-[12]	20	10	5.0	6.0-8.5	1	30	110	
040805	Chinchuba Swamp Wetland-Forested wetland located 0.87 miles southwest of Mandeville, southeast of Sanctuary Ridge, and north of Lake Pontchartrain	B C	[23]	[23]	[23]	[23]	2	[23]	[23]	
040806	East Tchefuncte Marsh Wetland-Freshwater and brackish marsh located just west of Mandeville, bounded on the south by Lake Pontchartrain, the west by Tchefuncte River, the north by LA-22, and the east by Sanctuary Ridge	B C	[23]	[23]	[23]	[23]	2	[23]	[23]	
040901	Bayou LaCombe-From headwaters to US-190 (Scenic)	A B C G	30	30	5.0	6.0-8.5	1	30	150	
040902	Bayou LaCombe-From US-190 to Lake Pontchartrain (Scenic) (Estuarine)	A B C G	835	135	4.0	6.0-8.5	1	32	1,850	
040903	Bayou Cane-From headwaters to US-190 (Scenic)	A B C G	30	30	5.0	6.0-8.5	1	30	150	
040904	Bayou Cane-From US-190 to Lake Pontchartrain (Scenic) (Estuarine)	A B C G	N/A	N/A	4.0	6.0-8.5	1	32	N/A	
040905	Bayou Liberty-From headwaters to LA-433	A B C	250	100	5.0	6.0-8.5	1	32	500	
040906	Bayou Liberty-From LA-433 to Bayou Bonfouca (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	32	N/A	
040907	Bayou Bonfouca-From headwaters to LA-433	A B C	250	100	5.0	6.0-8.5	1	32	500	
040908	Bayou Bonfouca-From LA-433 to Lake Pontchartrain (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	32	N/A	
040909	W-14 Main Diversion Canal-From headwaters to Salt Bayou	A B C-[4]	N/A	N/A	[4]	6.0-8.5	1	32	N/A	
040910	Salt Bayou-From headwaters to Lake Pontchartrain (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	32	N/A	
040911	Grand Lagoon; includes associated canals (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	32	N/A	
041001	Lake Pontchartrain-West of US-11 bridge (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	32	N/A	
041002	Lake Pontchartrain-East of US-11 bridge (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	32	N/A	
041101	Bonnet Carre Spillway	A B C	250	75	5.0	6.0-8.5	1	30	500	
041201	Bayou Labranche-From headwaters to Lake Pontchartrain (Scenic) (Estuarine)	A B C G	N/A	N/A	4.0	6.0-8.5	1	32	N/A	
041202	Bayou Trepagnier-From Norco to Bayou Labranche (Scenic) (Estuarine)	A B C G	N/A	N/A	4.0	6.0-8.5	1	32	N/A	
041203	Duncan Canal-From headwaters to Lake Pontchartrain; also called Parish Line Canal (Estuarine)	A B C	N/A	N/A	4.0	6.5-8.5	1	32	N/A	
041301	Bayou St. John (Scenic) (Estuarine)	A B C G	N/A	N/A	4.0	6.0-8.5	1	32	N/A	
041302	Lake Pontchartrain Drainage Canals in Jefferson and Orleans Parishes (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	32	N/A	
041401	New Orleans East Leveed Water Bodies (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	32	N/A	
041501	Inner Harbor Navigation Canal-From Mississippi River Lock to Lake Pontchartrain (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A	
041601	Intracoastal Waterway-From Inner Harbor Navigation Canal to Chef Menteur Pass (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A	
041701	The Rigolets (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	32	N/A	
041702	Bayou Sauvage-From New Orleans hurricane protection levee to Chef Menteur Pass; includes Chef Menteur Pass (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	32	N/A	
041703	Intracoastal Waterway-From Chef Menteur Pass to Lake Borgne (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	32	N/A	
041704	Lake St. Catherine	A B C	N/A	N/A	5.0	6.5-9.0	1	32	N/A	
041801	Bayou Bienvenue-From headwaters to hurricane gate at MRGO (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A	
041802	Bayou Chaperon (Scenic)(Estuarine)	A B C G	N/A	N/A	4.0	6.5-9.0	1	35	N/A	
041803	Bashman Bayou-From headwaters to Bayou Dupre (Scenic) (Estuarine)	A B C G	N/A	N/A	4.0	6.5-9.0	1	35	N/A	
041804	Bayou Dupre-From Lake Borgne Canal to Terre Beau Bayou (Scenic) (Estuarine)	A B C G	N/A	N/A	4.0	6.5-9.0	1	35	N/A	
041805	Lake Borgne Canal-From Mississippi River siphon at Violet to Bayou Dupre; also called Violet Canal (Scenic) (Estuarine)	A B C G	N/A	N/A	4.0	6.5-9.0	1	35	N/A	
041806	Pirogue Bayou-From Bayou Dupre to New Canal (Scenic) (Estuarine)	A B C G	N/A	N/A	4.0	6.5-9.0	1	35	N/A	
041807	Terre Beau Bayou-From Bayou Dupre to New Canal (Scenic)	A B C G	N/A	N/A	4.0	6.5-9.0	1	35	N/A	

**Table 3. Numerical Criteria and Designated Uses**

**A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters**

Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
	(Estuarine)								
041808	New Canal (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
041809	Poydras-Verret Marsh Wetland–Forested and marsh wetland located 1.5 miles north of St. Bernard, south of Violet Canal, and northeast of Forty Arpent Canal	B C	[17]	[17]	[17]	[17]	2	[17]	[17]
041901	Mississippi River Gulf Outlet (MRGO)–From ICWW to Breton Sound at MRGO mile 30	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
042001	Lake Borgne	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
042002	Bayou Bienvenue–From Bayou Villere to Lake Borgne (Scenic) (Estuarine)	A B C E G	N/A	N/A	4.0	6.5-9.0	4	35	N/A
042003	Bayou La Loutre–From MRGO to Eloi Bay (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
042004	Bayou Bienvenue–From MRGO to Bayou Villere (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
042101	Bayou Terre Aux Boeufs (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
042102	River Aux Chenes; also called Oak River (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
042103	Bayou Gentilly–From Bayou Terre Aux Boeufs to Petit Lake (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
042104	Petit Lake	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
042105	Lake Lery	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
042201	Chandeleur Sound	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
042202	California Bay and Breton Sound	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
042203	Bay Boudreau	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
042204	Drum Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
042205	Morgan Harbor	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
042206	Eloi Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
042207	Lake Fortuna	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
042208	Bay Gardene, Black Bay, Lost Bayou, American Bay, and Bay Crabe	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
042209	Lake Pontchartrain Basin Coastal Bays and Gulf Waters to the State three-mile limit	A B C E	N/A	N/A	5.0	6.5-9.0	4	32	N/A
<b>Mermentau River Basin (05)</b>									
050101	Bayou Des Cannes–From headwaters to Mermentau River	A B C F	90	30	[16]	6.0-8.5	1	32	260
050103	Bayou Mallet–From headwaters to Bayou Des Cannes	A B C F	90	30	[16]	6.0-8.5	1	32	260
050201	Bayou Plaquemine Brule–From headwaters to Bayou Des Cannes	A B C F	90	30	[16]	6.0-8.5	1	32	260
050301	Bayou Nezpique–From headwaters to Mermentau River; includes intermittent portion of Beaver Creek [2]	A B C F	90	30	[16]	6.0-8.5	1	32	260
050303	Castor Creek–From headwaters to Bayou Nezpique	A B C	90	30	[16]	6.0-8.5	1	32	260
050304	Bayou Blue–From headwaters to Bayou Nezpique	A B C	90	30	[16]	6.0-8.5	1	32	260
050401	Mermentau River–From headwaters to Lake Arthur	A B C F	90	30	[16]	6.0-8.5	1	32	260
050402	Lake Arthur and Lower Mermentau River to Grand Lake	A B C	90	30	5.0	6.0-8.5	1	32	260
050501	Bayou Queue de Tortue–From headwaters to Mermentau River	A B C F	90	30	[16]	6.0-8.5	1	32	260
050601	Lacassine Bayou–From headwaters to Grand Lake	A B C F	90	10	[16]	6.0-8.5	1	32	400
050602	Intracoastal Waterway–From Calcasieu River Basin Boundary to Mermentau River	A B C F	250	75	5.0	6.5-9.0	1	32	500
050603	Bayou Chene–From headwaters to Lacassine Bayou; includes Bayou Grand Marais	A B C F	90	10	5.0	6.5-9.0	1	32	400
050701	Grand Lake	A B C F	250	75	5.0	6.5-9.0	1	32	500
050702	Intracoastal Waterway–From Mermentau River to Vermilion Locks	A B C F	250	75	5.0	6.0-9.0	1	32	500
050703	White Lake	A B C F	250	75	5.0	6.5-9.0	1	32	500
050801	Mermentau River–From Catfish Point Control Structure to Gulf of Mexico (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
050802	Big Constance Lake; includes associated water bodies (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
050901	Mermentau River Basin Coastal Bays and Gulf Waters to the State three-mile limit	A B C E	N/A	N/A	5.0	6.5-9.0	4	32	N/A
<b>Vermilion-Teche River Basin (06)</b>									
060101	Spring Creek–From headwaters to Cocodrie Lake (Scenic)	A B C G	10	5	5.0	6.0-8.5	1	30	100
060102	Cocodrie Lake	A B C	10	5	[19]	6.0-8.5	1	32	100
060201	Bayou Cocodrie–From US-167 to Bayou Boeuf-Cocodrie Diversion Canal (Scenic)	A B C G	45	35	[19]	6.0-8.5	1	32	100
060202	Bayou Cocodrie–From Cocodrie Diversion Canal to Bayou Boeuf	A B C	45	35	5.0	6.0-8.5	1	32	100
060203	Chicot Lake	A B C	90	30	5.0	6.0-8.5	1	32	260
060204	Bayou Courtableau–From headwaters to West Atchafalaya Borrow Pit Canal	A B C	65	70	[22]	6.0-8.5	1	32	440
060206	Indian Creek and Indian Creek Reservoir	A B C D	10	5	5.0	6.0-8.5	1	32	100
060207	Bayou des Glaises Diversion Channel/West Atchafalaya	A B C	100	75	5.0	6.0-8.5	1	32	500



**Table 3. Numerical Criteria and Designated Uses**

**A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters**

Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
	Borrow Pit Canal—From Bayou des Glaises to Bayou Courtableau								
060208	Bayou Boeuf—From headwaters to Bayou Courtableau	A B C	45	35	5.0	6.0-8.5	1	32	100
060209	Irish Ditch and Big Bayou—From unnamed ditch to Irish Ditch No. 1 to Big Bayou to Irish Ditch No. 2 to Bayou Rapides	B C	45	35	[2]	6.0-8.5	2	32	100
060210	Bayou Carron	A B C	40	30	5.0	6.0-8.5	1	32	220
060211	West Atchafalaya Borrow Pit Canal—From Bayou Courtableau to Henderson; includes Bayou Portage	A B C	65	70	5.0	6.0-8.5	1	32	440
060212	Chatlin Lake Canal and Bayou DuLac—From Alexandria to Bayou des Glaises Diversion Canal; includes a portion of Bayou DeGlaises	A B C	45	35	5.0	6.0-8.5	1	32	100
060301	Bayou Teche—From headwaters at Bayou Courtableau to Keystone Locks and Dam	A B C	65	70	5.0	6.0-8.5	1	32	440
060401	Bayou Teche—From Keystone Locks and Dam to Charenton Canal	A B C	80	50	5.0	6.0-8.5	1	32	350
060501	Bayou Teche—From Charenton Canal to Wax Lake Outlet	A B C D	80	50	5.0	6.0-8.5	1	32	350
060601	Charenton Canal—From Charenton Floodgate to ICWW; includes Bayou Teche from Charenton to Baldwin	A B C D	250	75	5.0	6.0-8.5	1	32	500
060701	Tete Bayou	A B C	80	50	5.0	6.0-8.5	1	32	350
060702	Lake Fausse Point and Dauterive Lake	A B C	80	50	5.0	6.0-8.5	1	32	350
060703	Bayou Du Portage	A B C	80	50	5.0	6.0-8.5	1	32	350
060801	Vermilion River—From headwaters to LA-3073 bridge	A B C F	230	70	5.0	6.0-8.5	1	32	440
060801-001	Cote Gelee Wetland—Forested wetland located in Lafayette Parish, two miles east of Broussard, two miles northeast of US-90, and west of Bayou Tortue	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
060802	Vermilion River—From LA-3073 bridge to ICWW	A B C F	230	70	[6]	6.0-8.5	1	32	440
060803	Vermilion River Cutoff—From ICWW to Vermilion Bay (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
060804	Intracoastal Waterway—From Vermilion Lock to one-half mile west of Gum Island Canal (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
060805	Breaux Bridge Swamp—Forested wetland in St. Martin Parish, one-half mile southwest of Breaux Bridge, southeast of LA-94, west of Bayou Teche, east of Vermilion River, and north of Evangeline and Ruth Canals; also called Cyprière Perdue Swamp	B C	[5]	[5]	[5]	[5]	2	[5]	[5]
060806	Cypress Island Coulee Wetland—Forested wetland located in St. Martin Parish, two miles west of St. Martinville, one-half mile north of LA-96, west of Bayou Teche, and east of Vermilion River	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
060901	Bayou Petite Anse—From headwaters to Bayou Carlin (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
060902	Bayou Carlin—From Lake Peigneur to Bayou Petite Anse; also called Delcambre Canal (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
060903	Bayou Tigre—From headwaters to Bayou Petite Anse (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
060904	New Iberia Southern Drainage Canal—From headwaters to ICWW (Estuarine)	A B L-[24]	N/A	N/A	[24]	6.5-9.0	[24]	35	N/A
060906	Intracoastal Waterway—From New Iberia Southern Drainage Canal to Bayou Sale (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
060907	Franklin Canal	A B C	250	75	5.0	6.0-8.5	1	35	500
060908	Spanish Lake	A B C	250	75	5.0	6.0-8.5	1	32	500
060909	Lake Peigneur	A B C	N/A	N/A	5.0	6.5-9.0	1	35	N/A
060910	Boston Canal; includes associated canals (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
060911	Dugas Canal—By Tiger Lagoon Oil and Gas Field (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
061001	West Cote Blanche Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
061002	East Cote Blanche Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
061101	Bayou Petite Anse—From Bayou Carlin at its confluence with Bayou Tigre to ICWW (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
061102	Intracoastal Waterway—From one-half mile west of Gum Island Canal to New Iberia Southern Drainage Canal (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
061103	Freshwater Bayou Canal—From one-half mile below ICWW to control structure (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
061104	Vermilion Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
061105	Marsh Island (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	4	35	N/A
061201	Vermilion-Teche River Basin Coastal Bays and Gulf Waters to the State three-mile limit	A B C E	N/A	N/A	5.0	6.0-9.0	4	32	N/A
<b>Mississippi River Basin (07)</b>									
070101	Mississippi River—From Arkansas state line to Old River Control Structure	A B C	75	120	5.0	6.0-9.0	1	32	400

**Table 3. Numerical Criteria and Designated Uses**

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Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
070102	Gassoway Lake	A B C	75	120	5.0	6.0-8.5	1	32	400
070103	Marengo Bend—Portion within the Louisiana state line	A B C D	250	75	5.0	6.0-8.5	1	32	500
070201	Mississippi River—From Old River Control Structure to Monte Sano Bayou	A B C D	75	120	5.0	6.0-9.0	1	32	400
070202	Raccourci Old River	A B C	100	75	5.0	6.0-8.5	1	32	500
070203	Devil's Swamp Lake and Bayou Baton Rouge	A B C	75	120	5.0	6.0-8.5	1	32	400
070301	Mississippi River—From Monte Sano Bayou to Head of Passes	A B C D	75	120	5.0	6.0-9.0	1	32	400
070401	Mississippi River Passes—Head of Passes to Mouth of Passes; includes all passes in the birdfoot delta (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
070501	Bayou Sara—From Mississippi state line to Mississippi River	A B C	100	75	5.0	6.0-8.5	1	32	500
070502	Thompson Creek—From Mississippi state line to Mississippi River	A B C	100	75	5.0	6.0-8.5	1	32	500
070503	Capitol Lake	A B C	75	120	5.0	6.0-8.5	1	32	400
070504	Monte Sano Bayou—From US-61 to Mississippi River [7], [8]	B L	[7]	[7]	3.0	6.0-9.0	1	35 [8]	[7]
070505	Tunica Bayou—From headwaters to Mississippi River	A B C	100	75	5.0	6.0-8.5	1	32	500
070601	Mississippi River Basin Coastal Bays and Gulf Waters to the State three-mile limit	A B C E	N/A	N/A	5.0	6.5-9.0	4	32	N/A
<b>Ouachita River Basin (08)</b>									
080101	Ouachita River—From Arkansas state line to Columbia Lock and Dam	A B C D	160	35	[15]	6.0-8.5	1	33	350
080102	Bayou Chauvin—From headwaters to Ouachita River	A B C	160	35	5.0	6.0-8.5	1	33	350
080201	Ouachita River—From Columbia Lock and Dam to Jonesville	A B C	160	50	5.0	6.0-8.5	1	33	400
080202	Bayou Louis—From headwaters to Ouachita River	A B C	250	75	5.0	6.0-8.5	1	32	500
080203	Lake Louis	A B C	250	75	5.0	6.0-8.5	1	32	500
080301	Black River—From Jonesville to Corps of Engineers (USACE) Control Structure at Mile 25	A B C	95	20	5.0	6.0-8.5	1	32	265
080302	Black River—From USACE Control Structure to Red River	A B C	95	20	5.0	6.0-8.5	1	32	265
080401	Bayou Bartholomew—From Arkansas state line to Ouachita River (Scenic to Dead Bayou)	A B C G	55	35	5.0	6.0-8.5	1	32	420
080501	Bayou de L'Outre—From Arkansas state line to Ouachita River (Scenic)	A B C G	250	45	5.0	6.0-8.5	1	33	500
080601	Bayou D'Arbonne—From headwaters to Lake Claiborne	A B C D	50	15	5.0	6.0-8.5	1	32	200
080602	Lake Claiborne	A B C D	50	15	5.0	6.0-8.5	1	32	200
080603	Bayou D'Arbonne—From Lake Claiborne to Bayou D'Arbonne Lake	A B C	50	15	5.0	6.0-8.5	1	32	200
080604	Bayou D'Arbonne Lake	A B C	50	15	5.0	6.0-8.5	1	32	200
080605	Bayou D'Arbonne—From Bayou D'Arbonne Lake to Ouachita River (Scenic)	A B C G	50	15	5.0	6.0-8.5	1	32	200
080606	Cypress Creek—From headwaters to Bayou D'Arbonne; includes Colvin Creek	A B C	65	10	5.0	6.0-8.5	1	32	160
080607	Corney Bayou—From Arkansas state line to Corney Lake (Scenic)	A B C G	160	25	5.0	6.0-8.5	1	32	300
080608	Corney Lake	A B C	160	25	5.0	6.0-8.5	1	32	300
080609	Corney Bayou—From Corney Lake to Bayou D'Arbonne Lake (Scenic)	A B C G	160	25	5.0	6.0-8.5	1	32	300
080610	Middle Fork Bayou D'Arbonne—From headwaters to Bayou D'Arbonne Lake (Scenic)	A B C G	50	15	[20]	6.0-8.5	1	32	200
080701	Bayou Desiard and Lake Bartholomew; also called Dead Bayou	A B C D	25	25	5.0	6.0-8.5	1	32	100
080801	Cheniere Creek—From headwaters to Cheniere Brake Lake	A B C	25	25	5.0	6.0-8.5	1	32	100
080802	Cheniere Brake Lake	A B C	25	25	5.0	6.0-8.5	1	32	100
080901	Boeuf River—From Arkansas state line to Ouachita River	A B C	105	45	5.0	6.0-8.5	1	32	430
080902	Bayou Bonne Idee—From headwaters to Boeuf River	A B C	20	10	5.0	6.0-8.5	1	32	180
080903	Big Creek—From headwaters to Boeuf River; includes Big Colewa Bayou	A B C	230	75	5.0	6.0-8.5	1	32	635
080904	Bayou Lafourche—From near Oakridge to Boeuf River near Columbia	A B C	500	200	5.0	6.0-8.5	1	32	1,500
080905	Turkey Creek—From headwaters to Turkey Creek Cutoff; includes Turkey Creek Cutoff, Big Creek, and Glade Slough	B C	250	75	[2]	6.0-8.5	2	32	500
080906	Turkey Creek—From Turkey Creek Cutoff to Turkey Creek Lake	A B C	250	75	5.0	6.0-8.5	1	32	500
080907	Turkey Creek Lake; includes outfall to Boeuf River	A B C	250	75	5.0	6.0-8.5	1	32	500
080908	Lake LaFourche	A B C	250	75	5.0	6.0-8.5	1	32	500
080909	Crew Lake	A B C	250	75	5.0	6.0-8.5	1	32	500
080910	Clear Lake	A B C	250	75	5.0	6.0-8.5	1	32	500
080911	Woolen Lake	A B C	250	75	5.0	6.0-8.5	1	32	500
080912	Tisdale Brake and Stalkinghead Creek—From headwaters to Little Bayou Boeuf	B L	500	200	[13]	6.0-8.5	2	32	1,500
081001	Bayou Macon—From Arkansas state line to Tensas River	A B C	50	55	5.0	6.0-8.5	1	32	380
081002	Joe's Bayou—From headwaters to Bayou Macon	A B C	250	75	5.0	6.0-8.5	1	32	500

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Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
081003	Deer Creek–From headwaters to Boeuf River	B L	105	45	[13]	6.0-8.5	2	32	430
081101	Lake Providence	A B C	25	25	5.0	6.0-8.5	1	32	150
081201	Tensas River–From headwaters to Jonesville; includes Tensas Bayou	A B C	45	30	5.0	6.0-8.5	1	32	500
081202	Lake St. Joseph	A B C	25	25	5.0	6.0-8.5	1	32	150
081203	Lake Bruin	A B C D	25	25	5.0	6.0-8.5	1	32	150
081301	Little River–From Archie Dam to Ouachita River	A B C	95	10	5.0	6.0-8.5	1	32	265
081401	Dugdemona River–From headwaters to Big Creek	A B C	250	750	[14]	6.0-8.5	1	32	2,000
081402	Dugdemona River–From Big Creek to Little River	A B C	250	750	5.0	6.0-8.5	1	32	2,000
081501	Castor Creek–From headwaters to Little River	A B C	25	25	5.0	6.0-8.5	1	32	100
081502	Chatham Lake	A B C	25	25	5.0	6.0-8.5	1	32	100
081503	Beaucoup Creek–From headwaters to Castor Creek	A B C	25	25	[21]	6.0-8.5	1	32	100
081504	Flat Creek–From headwaters to Castor Creek	A B C	25	25	5.0	6.0-8.5	1	32	100
081505	Caney Lake	A B C	25	25	5.0	6.0-8.5	1	32	100
081601	Little River–From Castor Creek-Dugdemona confluence to Bear Creek (Scenic)	A B C G	250	500	5.0	6.0-8.5	1	33	1,000
081601-556716	Georgetown Reservoir	A B C G D	250	500	5.0	6.0-8.5	1	33	1,000
081602	Little River–From Bear Creek to Catahoula Lake (Scenic)	A B C G	50	75	5.0	6.0-8.5	1	33	260
081603	Catahoula Lake	A B C	50	75	5.0	6.0-8.5	1	33	260
081604	Catahoula Lake Diversion Canal–From Catahoula Lake to Black River	A B C	50	75	5.0	6.0-8.5	1	33	260
081605	Little River–From Catahoula Lake to Dam at Archie	A B C	50	75	5.0	6.0-8.5	1	33	260
081606	Fish Creek–From headwaters to Little River (Scenic)	A B C G	50	75	5.0	6.0-8.5	1	33	260
081607	Trout Creek–From headwaters to Little River (Scenic)	A B C G	50	75	5.0	6.0-8.5	1	33	260
081608	Big Creek–From headwaters to Little River (Scenic)	A B C D G	50	75	5.0	6.0-8.5	1	33	260
081609	Hemphill Creek–From headwaters to Catahoula Lake; includes Hair Creek	A B C	50	75	5.0	6.0-8.5	1	33	260
081610	Old River–From Catahoula Lake to Little River	A B C	250	75	5.0	6.0-8.5	1	32	500
081611	Bayou Funny Louis–From headwaters to Little River	A B C	50	75	5.0	6.0-8.5	1	33	260
<b>Pearl River Basin (09)</b>									
090101	Pearl River–From Mississippi state line to Pearl River Navigation Canal	A B C	20	15	5.0	6.0-8.5	1	32	180
090102	East Pearl River–From Holmes Bayou to I-10	A B C	20	15	5.0	6.0-8.5	1	32	180
090103	East Pearl River–From I-10 to Lake Borgne (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	35	N/A
090104	Peters Creek–From headwaters to Pearl River	A B C	20	30	5.0	6.0-8.5	1	30	150
090105	Pearl River Navigation Canal–From Pools Bluff to Lock No. 3	A B C	20	15	5.0	6.0-8.5	1	32	180
090106	Holmes Bayou–From Pearl River to West Pearl River (Scenic)	A B C G	20	15	5.0	6.0-8.5	1	32	180
090107	Pearl River–From Pearl River Navigation Canal to Holmes Bayou	A B C	20	15	5.0	6.0-8.5	1	32	180
090201	West Pearl River–From headwaters to Holmes Bayou (Scenic)	A B C G	20	15	5.0	6.0-8.5	1	32	180
090202	West Pearl River–From Holmes Bayou to The Rigolets; includes east and west mouths (Scenic)	A B C G	90	20	5.0	6.0-8.5	1	32	235
090202-5126	Morgan River–From Porters River to West Pearl River (Scenic)	A B C G	90	20	5.0	6.0-8.5	1	32	235
090203	Lower Bogue Chitto–From Pearl River Navigation Canal to Wilsons Slough	A B C	15	10	5.0	6.0-8.5	1	32	105
090204	Pearl River Navigation Canal–From below Lock No. 3	A B C	15	10	5.0	6.0-8.5	1	32	105
090205	Wilson Slough–From Bogue Chitto to West Pearl River (Scenic)	A B C G	15	10	5.0	6.0-8.5	1	32	105
090206	Bradley Slough–From Bogue Chitto to West Pearl River (Scenic)	A B C G	15	10	5.0	6.0-8.5	1	32	105
090207	Middle Pearl River and West Middle Pearl River–From West Pearl River to Little Lake	A B C	90	20	5.0	6.0-8.5	1	32	235
090207-5112	Morgan Bayou–From headwaters near I-10 to Middle River	A B C	90	20	5.0	6.0-8.5	1	32	235
090208	Little Lake (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	32	N/A
090301	Pushpatapa Creek–From headwaters and tributaries at Mississippi state line to Pearl River floodplain (Scenic)	A B C G	15	12	5.0	6.0-8.5	1	35	105
090401	Bogue Lusa Creek–From headwaters to Pearl River floodplain	A B C	30	45	5.0	6.0-8.5	1	32	300
090501	Bogue Chitto River–From Mississippi state line to Pearl River Navigation Canal (Scenic)	A B C G	15	10	5.0	6.0-8.5	1	35	105
090502	Big Silver Creek–From headwaters to Bogue Chitto River	A B C	15	10	5.0	6.0-8.5	1	35	105
090503	Little Silver Creek–From headwaters to Bogue Chitto River	A B C	15	10	5.0	6.0-8.5	1	35	105
090504	Lawrence Creek–From headwaters to Bogue Chitto River	A B C	15	10	5.0	6.0-8.5	1	35	105
090505	Bonner Creek–From headwaters to Bogue Chitto River	A B C	15	10	5.0	6.0-8.5	1	35	105
090506	Thigpen Creek–From headwaters to Bogue Chitto River	A B C	15	10	5.0	6.0-8.5	1	35	105

**Table 3. Numerical Criteria and Designated Uses**

**A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters**

Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
<b>Red River Basin (10)</b>									
100101	Red River–From Arkansas state line to US-165 in Alexandria	A B C D F	185	110	5.0	6.0-8.5	1	34	780
100201	Red River–From US-165 to Old River Control Structure Outflow Channel	A B C D	185	110	5.0	6.0-8.5	1	34	780
100202	Little River–From headwaters to Old River near Marksville	A B C	250	75	5.0	6.0-8.5	1	32	500
100203	Old River; includes associated water bodies in Spring Bayou WMA; also called LaVielle Riviere	A B C	250	75	5.0	6.0-8.5	1	32	500
100301	Black Bayou–From Texas state line to LA-1 at Black Bayou Lake	A B C F	250	25	5.0	6.0-8.5	1	33	500
100302	Black Bayou Lake–From LA-1 to spillway	A B C	250	25	5.0	6.0-8.5	1	33	500
100303	Black Bayou–From spillway at Black Bayou Lake to Twelve Mile Bayou	A B C	250	25	5.0	6.0-8.5	1	33	500
100304	Twelve Mile Bayou–From headwaters to Red River	A B C D F	175	75	5.0	6.0-8.5	1	32	500
100305	Mahlin Bayou and McCain Creek–From headwaters to Twelve Mile Bayou	B L	175	75	[14]	6.0-8.5	2	32	500
100306	Kelly Bayou–From Arkansas state line to Black Bayou	A B C F	90	40	5.0	6.0-8.5	1	33	665
100307	Caddo Lake–From Texas state line to spillway; includes James Bayou	A B C D F	120	35	5.0	6.0-8.5	1	34	325
100308	Paw Paw Bayou–From Texas state line to Cross Lake; includes tributaries	A B C D F	75	25	5.0	6.0-8.5	1	32	150
100309	Cross Bayou–From Texas state line to Cross Lake	A B C D F	75	25	5.0	6.0-8.5	1	32	150
100310	Cross Lake	A B C D F	75	25	5.0	6.0-8.5	1	32	150
100401	Bayou Bodcau–From Arkansas state line to Red Chute Bayou at Cypress Bayou confluence	A B C F	250	75	5.0	6.0-8.5	1	32	800
100402	Red Chute Bayou–From Cypress Bayou to Flat River	A B C	250	75	[14]	6.0-8.5	1	32	800
100403	Cypress Bayou–From headwaters to Cypress Bayou Reservoir	A B C D F	100	25	5.0	6.0-8.5	1	32	300
100404	Cypress Bayou Reservoir	A B C D F	100	25	5.0	6.0-8.5	1	32	300
100405	Black Bayou–From headwaters to spillway at Black Bayou Reservoir; includes Black Bayou Reservoir	A B C D F	100	25	5.0	6.0-8.5	1	32	300
100406	Flat River–From headwaters to Loggy Bayou	A B C	250	75	5.0	6.0-8.5	1	32	300
100501	Bayou Dorcheat–From Arkansas state line to Lake Bistineau (Scenic)	A B C F G	250	25	5.0	6.0-8.5	1	33	440
100502	Lake Bistineau	A B C F	250	25	5.0	6.0-8.5	1	33	440
100503	Caney Creek–From headwaters to Bayou Dorcheat; excludes Caney Lake	A B C F	250	75	5.0	6.0-8.5	1	32	500
100504	Caney Lake	A B C F	250	75	5.0	6.0-8.5	1	32	500
100505	Loggy Bayou–From Lake Bistineau dam to Flat River	A B C F	75	35	5.0	6.0-8.5	1	32	250
100506	Loggy Bayou–From Flat River to Red River	A B C F	250	75	5.0	6.0-8.5	1	32	800
100601	Bayou Pierre–From headwaters to Bayou Pierre	A B C F	150	75	5.0	6.0-8.5	1	32	500
100602	Boggy Bayou–From headwaters to Wallace Lake	A B C F	150	75	5.0	6.0-8.5	1	32	500
100603	Wallace Lake	A B C F	150	75	5.0	6.0-8.5	1	32	500
100604	Wallace Bayou–From Wallace Lake to Bayou Pierre	A B C F	150	75	5.0	6.0-8.5	1	32	500
100605	Clear Lake and Smithport Lake; includes old Edwards Lake	A B C F	250	75	5.0	6.0-8.5	1	32	500
100606	Bayou Pierre–From Sawing Lake to Red River	A B C F	150	75	5.0	6.0-8.5	1	32	500
100701	Black Lake Bayou–From headwaters to one mile north of confluence with Leatherman Creek	A B C F	26	9	5.0	6.0-8.5	1	32	79
100702	Black Lake Bayou–From one mile north of Leatherman Creek to Black Lake (Scenic)	A B C F G	26	9	5.0	6.0-8.5	1	32	79
100703	Black Lake and Clear Lake	A B C D F	26	9	5.0	6.0-8.5	1	32	79
100704	Kepler Creek–From headwaters to Kepler Lake	A B C F	25	25	5.0	6.0-8.5	1	32	79
100705	Kepler Lake	A B C F	25	25	5.0	6.0-8.5	1	32	79
100706	Kepler Creek–From Kepler Lake to Black Lake Bayou	A B C F	25	25	5.0	6.0-8.5	1	32	79
100707	Castor Creek–From headwaters to Black Lake Bayou	A B C	26	9	5.0	6.0-8.5	1	32	79
100708	Castor Creek Tributary–From headwaters to Castor Creek	B C	26	9	[2]	6.0-8.5	2	32	79
100709	Grand Bayou–From headwaters to Black Lake Bayou	A B C D	26	9	5.0	6.0-8.5	1	32	79
100710	Grand Bayou Tributary–From headwaters to Grand Bayou	B C	26	9	[2]	6.0-8.5	2	32	79
100801	Saline Bayou–From headwaters near Arcadia to Saline Lake (Scenic)	A B C F G	110	20	5.0	6.0-8.5	1	32	250
100802	Saline Lake	A B C F	110	20	5.0	6.0-8.5	1	32	250
100803	Saline Bayou–From Saline Lake to Red River	A B C F	110	20	5.0	6.0-8.5	1	32	250
100804	Saline Bayou Tributary–From headwaters to Saline Bayou near Arcadia	B C	110	20	[2]	6.0-8.5	2	32	250
100901	Nantaches Creek–From headwaters to Nantaches Lake	A B C F	25	25	5.0	6.0-8.5	1	32	100
100902	Nantaches Lake	A B C F	25	25	5.0	6.0-8.5	1	32	100
100903	Bayou Nantaches–From Nantaches Lake to Red River	A B C F	25	25	5.0	6.0-8.5	1	32	100
101001	Sibley Lake	A B C D F	25	25	5.0	6.0-8.5	1	32	100
101101	Cane River–From above Natchitoches to Red River	A B C D F	25	25	5.0	6.0-8.5	1	32	100
101102	Kisatchie Bayou–From headwaters to Kisatchie National Forest	A B C F	25	25	5.0	6.0-8.5	1	32	100

**Table 3. Numerical Criteria and Designated Uses**

**A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters**

Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
101103	Kisatchie Bayou–From Kisatchie National Forest to Old River (Scenic)	A B C F G	25	25	5.0	6.0-8.5	1	32	100
101201	Cofite Reservoir	A B C	50	25	5.0	6.0-8.5	1	32	200
101301	Rigolette Bayou–From headwaters to Red River	A B C F	25	25	5.0	6.0-8.5	1	32	100
101302	Iatt Lake	A B C F	25	25	5.0	6.0-8.5	1	32	100
101303	Iatt Creek–From headwaters to Iatt Lake	A B C F	25	25	5.0	6.0-8.5	1	32	100
101401	Buhlow Lake near Pineville	A B C	100	50	5.0	6.0-8.5	1	32	250
101501	Big Saline Bayou–From Catahoula Lake to Saline Lake	A B C	250	75	5.0	6.0-8.5	1	32	500
101502	Saline Lake	A B C	250	75	5.0	6.0-8.5	1	32	500
101504	Saline Bayou–From Larto Lake to Saline Lake (Scenic)	A B C G	45	10	5.0	6.0-8.5	1	32	165
101505	Larto Lake	A B C	45	10	5.0	6.0-8.5	1	32	165
101506	Big Creek–From headwaters to Saline Lake	A B C	45	10	5.0	6.0-8.5	1	32	165
101601	Bayou Cocodrie–From Little Cross Bayou to Wild Cow Bayou (Scenic)	A B C F G	250	75	5.0	6.0-8.5	1	32	500
101602	Cocodrie Lake	A B C	250	75	5.0	6.0-8.5	1	32	500
101603	Lake St. John	A B C	250	75	5.0	6.0-8.5	1	32	500
101604	Lake Concordia	A B C	250	75	5.0	6.0-8.5	1	32	500
101605	Bayou Cocodrie–From Lake Concordia to LA-15	A B C	250	75	5.0	6.0-8.5	1	32	500
101606	Bayou Cocodrie–From Wild Cow Bayou to Red River	A B C	250	75	5.0	6.0-8.5	1	32	500
101607	Bayou Cocodrie–From LA-15 to Little Cross Bayou	B L	250	75	[13]	6.0-8.5	2	32	500
<b>Sabine River Basin (11)</b>									
110101	Toledo Bend Reservoir–From Texas-Louisiana state line to Toledo Bend Dam	A B C D F	120	60	5.0	6.0-8.5	1	34	500
110201	Sabine River–From Toledo Bend Dam to Old River below Sabine Island WMA	A B C D	120	60	5.0	6.0-8.5	1	33	500
110202	Pearl Creek–From headwaters to Sabine River (Scenic)	A B C D G	120	60	5.0	6.0-8.5	1	33	500
110301	Sabine River–From Old River below Sabine Island WMA to Sabine Lake (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	35	N/A
110302	Black Bayou–From Pirogue Ditch to Sabine Lake (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	32	N/A
110303	Sabine Lake (Estuarine)	A B C E	N/A	N/A	4.0	6.0-8.5	4	35	N/A
110304	Sabine Pass (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
110401	Bayou Toro–From headwaters to LA-473	A B C	25	25	5.0	6.0-8.5	1	32	150
110402	Bayou Toro–From LA-473 to Sabine River	A B C	25	25	5.0	6.0-8.5	1	32	150
110501	West Anacoco Creek–From headwaters to Vernon Lake	A B C	15	10	5.0	6.0-8.5	1	32	90
110502	East Anacoco Creek–From headwaters to Vernon Lake	A B C	15	10	5.0	6.0-8.5	1	32	90
110503	Vernon Lake	A B C	15	10	5.0	6.0-8.5	1	32	90
110504	Bayou Anacoco–From Vernon Lake to Anacoco Lake	A B C	15	10	5.0	6.0-8.5	1	32	90
110505	Anacoco Lake	A B C	15	10	5.0	6.0-8.5	1	32	90
110506	Bayou Anacoco–From Anacoco Lake to Cypress Creek	A B C	15	10	5.0	6.0-8.5	1	32	90
110507	Bayou Anacoco–From Cypress Creek to Sabine River	A B C	150	300	5.0	6.0-8.5	1	32	1,000
110601	Vinton Waterway–From Vinton to ICWW (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	35	N/A
110602	Black Bayou–From ICWW to Pirogue Ditch (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1	35	N/A
110701	Sabine River Basin Coastal Bays and Gulf Waters to the State three-mile limit	A B C E	N/A	N/A	5.0	6.5-9.0	4	32	N/A
<b>Terrebonne Basin (12)</b>									
120102	Bayou Poydras–From headwaters to Bayou Choctaw	A B C	250	75	5.0	6.0-8.5	1	32	500
120103	Bayou Choctaw–From Bayou Poydras to Bayou Grosse Tete	A B C	250	75	5.0	6.0-8.5	1	32	500
120104	Bayou Grosse Tete–From headwaters to ICWW near Wilbert Canal	A B C	25	25	5.0	6.0-8.5	1	32	200
120105	Chamberlin Canal–From Chamberlin to Bayou Choctaw	A B C	250	75	5.0	6.0-8.5	1	32	500
120106	Bayou Plaquemine–From Plaquemine Lock to ICWW	A B C	250	75	5.0	6.0-8.5	1	32	500
120107	Upper Grand River and Lower Flat River–From headwaters to ICWW	A B C	250	75	5.0	6.0-8.5	1	32	500
120108	False River	A B C	25	25	5.0	6.0-8.5	1	32	200
120109	Intracoastal Waterway–From Port Allen Locks to Bayou Sorrel Locks	A B C D	60	40	5.0	6.0-8.5	1	32	300
120110	Bayou Cholpe–From headwaters to Bayou Choctaw	A B C	25	25	5.0	6.0-8.5	1	32	200
120111	Bayou Maringouin–From headwaters to East Atchafalaya Basin Levee	A B C	25	25	5.0	6.0-8.5	1	32	200
120201	Lower Grand River and Belle River–From Bayou Sorrel Lock to Lake Palourde; includes Bay Natchez, Lake Natchez, Bayou Milhomme, and Bayou Long	A B C	60	40	5.0	6.0-8.5	1	32	300
120202	Bayou Black–From ICWW to Houma	A B C D	85	40	5.0	6.0-8.5	1	32	500
120203	Bayou Boeuf–From Lake Palourde to ICWW	A B C D	250	75	5.0	6.0-8.5	1	32	500
120204	Lake Verret and Grassy Lake	A B C	100	75	5.0	6.0-8.5	1	32	350
120205	Lake Palourde	A B C D	100	75	5.0	6.0-8.5	1	32	350
120206	Grand Bayou and Little Grand Bayou–From headwaters to Lake Verret	A B C	60	40	5.0	6.0-8.5	1	32	300

**Table 3. Numerical Criteria and Designated Uses**

**A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters**

Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
120207	Thibodaux Swamp–Forested wetland located in Lafourche and Terrebonne Parishes, 6.2 miles southwest of Thibodaux, east of Terrebonne-Lafourche Drainage Canal, and north of Southern Pacific Railroad; also called Pointe Au Chene Swamp	B C	[5]	[5]	[5]	[5]	2	[5]	[5]
120208	Bayou Ramos Swamp Wetland–Forested wetland located 1.25 miles north of Amelia in St. Mary Parish, south of Lake Palourde	B C	[18]	[18]	[18]	[18]	2	[18]	[18]
120301	Bayou Terrebonne–From Thibodaux to ICWW in Houma	A B C	540	90	5.0	6.0-8.5	1	32	1,350
120302	Company Canal–From Bayou Lafourche to ICWW	A B C D F	500	150	5.0	6.5-9.0	1	32	1,000
120303	Lake Long	A B C	500	150	5.0	6.5-9.0	1	32	1,000
120304	Intracoastal Waterway–From Houma to Larose	A B C D F	250	75	5.0	6.5-9.0	1	32	500
120401	Bayou Penchant–From Bayou Chene to Lake Penchant	A B C G	500	150	5.0	6.5-9.0	1	32	1,000
120402	Bayou Chene–From ICWW to Bayou Penchant	A B C	250	75	5.0	6.5-8.0	1	32	500
120403	Intracoastal Waterway–From Bayou Boeuf Locks to Bayou Black in Houma; includes segments of Bayous Boeuf, Black, and Chene	A B C D F	250	75	5.0	6.5-8.5	1	32	500
120404	Lake Penchant	A B C	500	150	5.0	6.5-9.0	1	32	1,000
120405	Lake Hache and Lake Theriot	A B C	500	150	5.0	6.0-8.5	1	32	1,000
120406	Lake de Cade	A B C E	N/A	N/A	5.0	6.0-9.0	4	35	N/A
120501	Bayou Grand Caillou–From Houma to Bayou Pelton	A B C	500	150	5.0	6.0-8.5	1	32	1,000
120502	Bayou Grand Caillou–From Bayou Pelton to Houma Navigation Canal (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
120503	Bayou Petit Caillou–From Bayou Terrebonne to LA-24 bridge	A B C E	500	150	5.0	6.0-9.0	4	32	1,000
120504	Bayou Petit Caillou–From LA-24 bridge to Boudreaux Canal (Estuarine)	A B C E	N/A	N/A	4.0	6.0-9.0	4	32	N/A
120505	Bayou Du Large–From Houma to Marmande Canal	A B C	500	150	5.0	6.5-9.0	1	32	1,000
120506	Bayou Du Large–From Marmande Canal to one-half mile north of St. Andrews Mission (Estuarine)	A B C E	N/A	N/A	4.0	6.0-9.0	4	35	N/A
120507	Bayou Chauvin–From Ashland Canal to Lake Boudreaux (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	32	N/A
120508	Houma Navigation Canal–From Bayou Pelton to one mile south of Bayou Grand Caillou (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
120509	Houma Navigation Canal–From Houma to Bayou Pelton	A B C D	500	150	5.0	6.0-8.5	1	32	1,000
120601	Bayou Terrebonne–From Houma to Company Canal (Estuarine)	A B C	445	105	4.0	6.0-9.0	1	32	1,230
120602	Bayou Terrebonne–From Company Canal to Humble Canal (Estuarine)	A B C E	5,055	775	4.0	6.5-9.0	4	32	10,000
120603	Company Canal–From ICWW to Bayou Terrebonne	A B C	500	150	5.0	6.5-9.0	1	32	1,000
120604	Bayou Blue–From ICWW to Grand Bayou Canal	A B C	445	105	5.0	6.5-9.0	1	32	1,000
120605	Bayou Pointe Au Chien–From headwaters to St. Louis Canal	A B C	445	105	5.0	6.5-9.0	1	32	1,000
120606	Bayou Blue–From Grand Bayou Canal to Bully Camp Canal (Estuarine)	A B C	5,055	775	4.0	6.5-9.0	1	32	10,000
120701	Bayou Grand Caillou–From Houma Navigation Canal to Caillou Bay (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
120702	Bayou Petit Caillou–From Boudreaux Canal to Houma Navigation Canal (Estuarine)	A B C E	N/A	N/A	4.0	6.0-9.0	4	32	N/A
120703	Bayou Du Large–From one-half mile north of St. Andrews Mission to Caillou Bay (Estuarine)	A B C E	N/A	N/A	4.0	6.0-9.0	4	35	N/A
120704	Bayou Terrebonne–From Humble Canal to Lake Barre (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
120705	Houma Navigation Canal–From one-half mile south of Bayou Grand Caillou to Terrebonne Bay (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
120706	Bayou Blue–From Bully Camp Canal to Lake Raccourci (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
120707	Lake Boudreaux	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120708	Lost Lake and Four League Bay	A B C E	N/A	N/A	5.0	6.0-9.0	4	35	N/A
120709	Bayou Petite Caillou–From Houma Navigation Canal to Terrebonne Bay	A B C E	N/A	N/A	5.0	6.0-9.0	4	32	N/A
120801	Caillou Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120802	Terrebonne Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120803	Timbalier Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120804	Lake Barre	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120805	Lake Pelto	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120806	Terrebonne Basin Coastal Bays and Gulf Waters to the State three-mile limit	A B C E	N/A	N/A	5.0	6.5-9.0	4	32	N/A

ENDNOTES:

[1] – [24] ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1130 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2405 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:1814, 1817 (September 2003), LR 30:1474 (July 2004), amended by the Office of Environmental Assessment, LR 30:2468 (November 2004), LR 31:918, 921 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:815, 816, 817 (May 2006), LR 33:832 (May 2007).

Herman Robinson, CPM  
Executive Counsel

0705#045

**RULE**

**Office of the Governor  
Division of Administration  
Office of Telecommunications Management**

Telecommunications Coordinator (LAC 4:IX.303)

In accordance with R.S. 39:140, R.S. 39:141, R.S. 39:143, R.S. 39:1751, R.S. 39:1752, R.S. 39:1753, R.S. 39:1754, and R.S. 39:1755, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Telecommunications Management hereby amends LAC Title 4, Part IX, Chapter 3, Section 303, Telecommunications Coordinator. In accordance with Act 1183 of 1999, the Office of the Governor, Division of Administration, Office of Telecommunications Management has given written consideration to the proposed Rule's impact on family.

**Title 4**

**ADMINISTRATION**

**Part IX. Telecommunications**

**Chapter 3. State Agencies' Responsibilities**

**§303. Telecommunications Coordinator**

A. All agencies shall appoint one or more representatives to be designated as the agency Telecommunications Coordinator(s). The Telecommunications Coordinator shall be recognized by the Office of Telecommunications Management as the agency's authorized representative for approving and coordinating telecommunications activity. The appointment of the Telecommunications Coordinator authorizes that person, on behalf of the agency, to make changes and additions for telecommunications equipment and services and to obligate related funds. Communications concerning policy and operating procedures will be directed to agencies through their respective Telecommunications Coordinator(s). As multiple Telecommunications Coordinators may be appointed to represent an agency, a Telecommunications Coordinator may be designated to have responsibility for voice only, data only, or both voice and data.

B. Training designed to instruct the Telecommunications Coordinator on the procedural aspects of interfacing with the Office of Telecommunications Management and the design and operation of various telecommunications systems will be furnished by the Office of Telecommunications Management upon request by agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:140, R.S. 39:141, R.S. 39:143, R.S. 39:1751, R.S. 39:1752, R.S. 39:1753, R.S. 39:1754, and R.S. 39:1755.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Telecommunications Management, LR 6:722 (December 1980), repromulgated LR 10:80 (February 1984), amended LR 17:267 (March 1991), LR 25:1624 (September 1999), LR 33:844 (May 2007).

Derald Kirkland  
Director

0705#080

**RULE**

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

Protective Helmets and Safety Vests (LAC 35:I.309)

The Louisiana State Racing Commission has amended LAC 35:I.309 "Protective Helmets and Safety Vests," to provide for safety vest requirements of anyone riding horses, in addition to jockeys in a race.

**Title 35**

**HORSE RACING**

**Part I. General Provisions**

**Chapter 3. General Rules**

**§309. Protective Helmets and Safety Vests**

A. All persons exercising or schooling horses are compelled to wear protective helmets recommended by the stewards and approved by the commission, and a safety vest designed to provide shock-absorbing protection to the upper body, as evidenced by a label with a rating of five, by the British Equestrian Trade Association. This shall also apply to association outriders and pony riders in post parade. Anyone failing to comply with this requirement may be fined or suspended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:423 (December 1976), amended LR 3:19 (January 1977), LR 4:271 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 33:844 (May 2007).

Charles A. Gardiner III  
Executive Director

0705#015

**RULE**

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

Racing a Horse under Investigation (LAC 35:I.1733)

The Louisiana State Racing Commission has amended LAC 35:I.1733 "Racing a Horse under Investigation," to revise the penalty portion of the Rule.

**Title 35**

**HORSE RACING**

**Part I. General Provisions**

**Chapter 17. Corrupt and Prohibited Practices**

**§1733. Racing a Horse under Investigation**

A. When a report as described in §1729 is received from the state chemist, the state steward shall immediately advise the trainer of his rights to have the "split" portion of the sample tested at his expense. The stable shall remain in good standing pending a ruling by the stewards, which shall not be made until the split portion of the original sample is confirmed positive by a laboratory chosen by the trainer from a list of referee laboratories. The horsemen's bookkeeper shall not release any affected purse monies until the results of the split portion of the sample are received by the commission. If the penalty options as described in §1737 and §1797 include a redistribution of the purse or a referral to the commission the horse allegedly to have been administered any such drug or substance shall not be allowed to enter or race during the investigation, and until the completion of the stewards' hearing.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), amended LR 3:45 (January 1977), LR 4:287 (August 1978), LR 7:262 (May 1981), LR 9:755 (November 1983), amended by the Department of Economic Development, Racing Commission, LR 18:367 (April 1992), LR 23:951 (August 1997), LR 24:1682 (September 1998), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 33:845 (May 2007).

Charles A. Gardiner III  
Executive Director

0705#013

**RULE**

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

Testing for Dangerous Substance Abuse (LAC 35:I.1791)

The Louisiana State Racing Commission has amended LAC 35:I.1791 "Testing for Dangerous Substance Abuse," to revise third violation penalties of the Rule (Paragraph D.4), with additional rehabilitation requirements.

**Title 35**

**HORSE RACING**

**Part I. General Provisions**

**Chapter 17. Corrupt and Prohibited Practices**

**§1791. Testing for Dangerous Substance Abuse**

A. - D3. ...

4. For a licensed person's third violation, he shall be suspended up to a maximum of 15 years and denied access to all racetracks, off-track wagering facilities and approved training facilities in Louisiana. His/her reinstatement may be allowed upon proof of enrollment and continued attendance in a commission approved drug rehabilitation program with a minimum of one year stay in a halfway house, at which he/she must attain the highest level of Recovery Dynamics, Step 12 of an AA/NA program, and otherwise submit proof he/she is currently and has been drug-free. In addition, he/she must sign a consent agreement with stipulations as determined by the commission.

D5. - F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 13:289 (May 1987), amended by Department of Economic Development, Racing Commission, LR 15:620 (August 1989), LR 16:394 (May 1990), LR 17:172 (February 1991), LR 17:648 (July 1991), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 33:845 (May 2007).

Charles A. Gardiner III  
Executive Director

0705#016

**RULE**

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

Total Dissolved Carbon Dioxide Testing (LAC 35:I.1720)

The Louisiana State Racing Commission has amended LAC 35:I.1720 "Total Dissolved Carbon Dioxide Testing," to revise the penalty portion of the rule.

**Title 35**

**HORSE RACING**

**Part I. General Provisions**

**Chapter 17. Corrupt and Prohibited Practices**

**§1720. Total Dissolved Carbon Dioxide Testing**

A. - B3. ...

4. In the event a sample drawn from a horse contains an amount of TCO<sub>2</sub> which exceeds the levels described above, the following penalties shall apply.

a. ...

b. The second time the laboratory reports an excessive TCO<sub>2</sub> level, the stewards shall suspend the trainer for the duration of the race meeting plus 10 days or for a period not to exceed six months, whichever is greater, the purse shall be redistributed and the case referred to the commission.



4.c. - 6. ...

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

HISTORICAL NOTE: Adopted by the Department of Economic Development, Racing Commission LR 26:1992 (September 2000), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 32:1221 (July 2006), LR 33:845 (May 2007).

Charles A. Gardiner III  
Executive Director

0705014

**RULE**

**Department of Health and Hospitals  
Board of Dentistry**

**Licensure and Fees**

(LAC 46:XXXIII.306, 415, 419, 706, 710, and 1506)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.306, 415, 419, 706, 710, and 1506.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXXIII. Dental Health Profession**

**Chapter 3. Dentists**

**§306. Requirements of Applicants for Licensure by  
Credentials**

A. - A.2. ...

3. has been in active practice, while possessing a nonrestricted license in another state, by working full-time as a dentist at a minimum of 1,000 hours per year for the preceding three years before applying for licensure in Louisiana or full-time dental education as a teacher for a minimum of three years immediately prior to applying for licensure; or has completed a two-year general dentistry residency program or successfully completed a residency program in one of the board recognized dental specialties as defined in §301; the applicant completing the residency program must apply for licensure within 180 days of graduation from said specialty program or fellowship or work full-time as a dentist for three years before licensure;

a. the requirement of practicing full-time as a dentist at a minimum of 1,000 hours per year for the preceding three years may be waived if the applicant agrees to teach full-time for two years in an accredited dental education program within the state of Louisiana. However, this license shall be rescinded should the dentist fail to complete his or her two year agreement with the school or institution;

A.4. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21:571 (June 1995), LR 22:23 (January 1996), LR 23:1528 (November 1997), LR 24:1114 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 26:1612 (August

2000), repromulgated LR 27:1893 (November 2001), amended LR 28:1777 (August 2002), LR 30:2305 (October 2004), LR 31:927 (April 2005), LR 32:243 (February 2006), LR 33:846 (May 2007).

**Chapter 4. Fees and Costs  
Subchapter C. Fees for Dentists**

**§415. Licenses, Permits, and Examinations (Dentists)**

A. For processing applications for licensure, permits, and examinations, the following non-refundable fees shall be payable in advance to the board:

- 1. ...
  - a. **Licensing of dental applicants who have successfully completed an examination administered by another jurisdiction which is accepted by the board** **\$300**
- 2. - 17. ...
- 18. retired volunteer dental license \$50
- 19. application and permitting for enteral conscious sedation office permit \$100
- 20. application and permitting for enteral conscious sedation personal permit \$100
- 21. renewal of enteral conscious sedation permit for adult patients \$50
- 22. renewal of enteral conscious sedation permit for pediatric patients \$50

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1526 (November 1997), LR 24:1115 (June 1998), LR 25:1478 (August 1999), LR 26:691 (April 2000), LR 28:1778 (August 2002), LR 32:243 (February 2006), LR 33:846 (May 2007).

**Subchapter D. Fees for Dental Hygienists**

**§419. Licenses, Permits and Examinations (Dental Hygienist)**

A. For processing applications for licensure, permits, and examinations, the following fees shall be payable in advance to the board:

- 1. ...
  - a. **Licensing of dental hygiene applications who have successfully completed an examination administered by another jurisdiction which is accepted by the board** **\$150**
- 2. - 11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (8) , R.S. 37:768, and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1527 (November 1997), LR 24:1115 (June 1998), LR 25:1478 (August 1999), LR 26:691 (April 2000), LR 28:1778 (August 2002), LR 32:243 (February 2006), LR 33:846 (May 2007).

**Chapter 7. Dental Hygienists**

**§706. Requirements of Applicants for Licensure by  
Credentials (Hygienists)**

A. - A.2. ...

3. has been in active practice or full-time dental hygiene education for a minimum of one year immediately prior to applying for licensure:

a. the requirement of practicing full-time as a dental hygienist at a minimum of one thousand hours per year for the preceding year may be waived if the applicant agrees to teach full-time for two years in an accredited dental

education program within the state of Louisiana. However, this license shall be rescinded should the dental hygienist fail to complete his or her two year agreement with the school or institution;

A.4. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760(8) and R. S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:737 (July 1992), amended LR 21:570 (June 1995), LR 22:23 (January 1996), LR 24:1117 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 26:1613 (August 2000), repromulgated LR 27:1894 (November 2001), amended LR 28:1778 (August 2002), LR 33:846 (May 2007).

#### **§710. Administration of Local Anesthesia for Dental Purposes**

A. - F. ...

G. A licensed dental hygienist who has demonstrated competence to the satisfaction of the board may qualify for a special endorsement and may undertake the administration of local anesthesia by:

1. providing satisfactory documentation via affidavit provided by the board evidencing the administration of local anesthesia for a period of not less than six months upon a minimum of fifty patients with no adverse complications;

2. substantiating the adequacy of training via affidavit provided by the board in the administration of local anesthesia; and

3. agreeing in writing via affidavit provided by the board to administer local anesthesia as provided by these rules.

H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1292 (July 1998), amended LR 25:1476 (August 1999), LR 26:1613 (August 2000), repromulgated LR 27:1894 (November 2001), amended LR 27:1892 (November 2001), LR 28:1779 (August 2002), LR 30:2306 (October 2004), LR 33:847 (May 2007).

#### **Chapter 15. Anesthesia/Analgesia Administration**

##### **§1506. Conscious Sedation with Enteral Drugs**

A. - D. ...

E. For adult patients, the licensee must provide proof of current certification in cardiopulmonary resuscitation Course "C," Basic Life Support for the Health Care Provider as defined by the American Heart Association or is equivalent. For pediatric patients, the licensee must provide proof of current certification in Pediatric Life Support (PALS), or its equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (8) and R.S. 37:793

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 22:1216 (December 1996), LR 32:244 (February 2006), LR 33:847 (May 2007).

C. Barry Ogden  
Executive Director

0704#057

## **RULE**

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

#### **Continuing Veterinary Medicine Education (LAC 46:LXXXV.Chapter 4)**

Editor's Note: The following Rule is being repromulgated to correct a codification error. The original Rule may be viewed on pages 648-649 of the April 20, 2000 *Louisiana Register*.

The Louisiana Board of Veterinary Medicine has amended LAC 46:LXXXV.400, 403, 405, 409, and 413 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1569. This text has been amended to alter the requirements and program approval of continuing veterinary medicine education for annual renewal of veterinary medicine license, from 16 credits hours per year to 20 credit hours per year with an expansion in the nature and substance of acceptable credit hours, in order to maintain and improve professional competencies for the health, welfare, and safety of the citizens and animals of Louisiana. This Rule becomes effective, after promulgation, for the period of time (July 1, 2007-June 30, 2008) for the 2008-2009 annual license renewal and every annual license renewal period thereafter.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part LXXXV. Veterinarians**

#### **Chapter 4. Continuing Veterinary Education**

##### **§400. Definitions**

*Contact Participation*—physical attendance at seminars, lectures, conferences, or workshops.

*Continuing Veterinary Education*—approved, accredited experience obtained from participation in post graduate veterinary studies, institutes, seminars, lectures, conferences, workshops, and other authorized forms of educational experiences so as to maintain and improve professional competencies for the health, welfare, and safety of the citizens and animals of Louisiana.

*Continuing Veterinary Education Units*—units of measure approved by the Louisiana Board of Veterinary Medicine for the purpose of accreditation of various continuing education activities. One continuing education unit is equivalent to one hour of activity.

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 16:224 (March 1990), amended LR 19:1427 (November 1993), LR 33:648 (April 2007), repromulgated LR 33:847 (May 2007).

##### **§403. Continuing Veterinary Education Requirements**

A. A minimum of 20 actual hours is required each fiscal year (July 1 through June 30) as a prerequisite for annual renewal of a license. Hours may be taken from:

1. any pre-approved program as described in §409;
2. ...

3. the 20 hour requirement for annual renewal of a license may be taken in any combination of the following board approved programs: clinical, alternative, regulatory, practice management, and/or research.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated as §405 by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:224 (March 1990), amended LR 19:1427 (November 1993), LR 23:1147 (September 1997), LR 28:1208 (June 2002), LR 33:649 (April 2007), repromulgated LR 33:847 (May 2007).

#### **§405. Exceptions and Exemptions**

A. A licensee who fails to obtain the required approved minimum of 20 hours within the prescribed 12-month period will not meet the requirements for renewal of his license. Such a license shall expire on September 30 for any licensee who does not timely and properly comply with the annual continuing education requirement. Thereafter, a licensee may apply for renewal of his expired license, however, he shall be unable to lawfully practice veterinary medicine until such time as the requirements for renewal have been met and documented to the satisfaction of the board. Any late fees and/or fines assessed by the board shall be paid before the renewal is issued.

B. - C.3. ...

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 16:224 (March 1990), amended LR 19:1428 (November 1993), LR 23:1147 (September 1997), LR 29:1478 (August 2003), LR 33:649 (April 2007), repromulgated LR 33:848 (May 2007).

#### **§409. Approved Continuing Education Programs**

A. ...

1. All units or hours from contact participation programs listed on the pre-approved list of the board shall be accepted.

2. The list of programs for which pre-approval has been granted will be updated as needed and published annually by the board.

3. ...

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 16:224 (March 1990), amended LR 19:1428 (November 1993), LR 33:649 (April 2007), repromulgated LR 33:848 (May 2007).

#### **§413. Non-Compliance**

A. - D. ...

E. The promulgation of rule amendments by the board published in the *Louisiana Register* on April 20, 2007 shall become effective for the period of time (July 1, 2007-June 30, 2008) for the 2008-2009 annual license renewal and every annual license renewal period thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated as by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:225 (March 1990), amended LR 19:1428 (November 1993), LR 33:649 (April 2007), repromulgated LR 33:848 (May 2007).

Wendy D. Parrish  
Administrative Director

0705#096

## **RULE**

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

#### **Retail Food Establishments (LAC 51:XXIII.305, 1307, 1311, 1901, 1911, and 3505)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the state health officer acting through the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, pursuant to the authority in R.S. 40:4(A)(1)(a), R.S. 40:5, R.S. 40:5.5, and R.S. 40:5.5.1 amends Title 51 (Public Health—Sanitary Code), Part XXIII (Retail Food Establishments). The specific Sections amended are §§305, 1307, 1311, 1901, 1911, and 3505. One purpose of such amendments will be to amend the code requirements so that they comport with the requirements of Act 647 of the 1999 Regular Session, Act 370 of the 2003 Regular Session, and Act 608 of the 2004 Regular Session. The substance of these particular legislative Acts relate to exempting certain types of food establishments from compliance with the Food Safety Certificate requirements. Another purpose for amending the code requirements is so that it comports with the requirements of Act 384 of the 2006 Regular Session. The substance of this particular Legislative Act requires food establishments which have a self-service buffet to post a sign encouraging patrons to wash their hands prior to self-service and defines what types of food establishments are exempt therefrom. In addition, these amendments will assist in clarifying other food establishment regulations as well as assisting in the effort to conform Louisiana's retail food establishment regulations with the latest recommendations of the 2001 United States Food and Drug Administration (FDA) Model Food Code.

#### **Title 51**

#### **PUBLIC HEALTH—SANITARY CODE**

#### **Part XXIII. Retail Food Establishments**

#### **Chapter 3. General Requirements**

#### **§305. Food Safety Certification**

#### **[formerly paragraph 23:002-2]**

A. The owner or a designated employee of each food establishment shall hold a "food safety certificate" from the department exclusively on behalf of that food establishment. The certificate shall be required to be renewed every five years.

1. For the purposes of this Section and §1901.D only, the term *food establishment* as defined in §101 of this Part shall additionally not include the following:

- a. private clubs where food is prepared and served exclusively for member consumption;
- b. religious or charitable food sales;
- c. any establishment that heats or prepares boudin or sausage for personal consumption;
- d. a bar or lounge that serves beverages only;
- e. temporary and seasonal establishments;
- f. nursing facilities;
- g. public, private, or parochial schools;
- h. elderly nutrition meal sites which do not prepare meals; and

i. child care facilities.

2. The owner or a designated food service employee of a child care facility shall be required to complete one hour of food safety training each year as part of the three hours of mandatory yearly training required under the requirements of LAC 51:XXI.301.A.9. When the owner or a designated food service employee of a child care facility holds a valid Food Safety Certificate issued under the provisions of this Section, the holder of said certificate will be credited with three years of the mandatory yearly training required under LAC 51:XXI.301.A.9.

B. - C.3.a. ...

b. a \$25 fee for each certificate.

EXCEPTION: All state and local government employees are exempt from this fee.

C.4. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1)(a), R.S. 40:5(2)(3)(5)(7)(15)(17)(19)(21), and R.S. 40:5.5(C)(D)(E)(F)(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:316 (February 2002), amended LR 28:1409 (June 2002), LR 33:848 (May 2007).

### Chapter 13. Temperature

#### §1307. Hot Holding Temperatures

[formerly paragraph 22:09-4]

A. Food stored for hot holding and service shall be held at a temperature of 135°F (57°C) or higher with the exception of roast beef. If roast beef is cooked in accordance with §1305.A.6 of this Chapter the minimum hot holding temperature shall be 130°F (54°C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1)(a) and R.S. 40:5(2)(3)(5)(7)(15)(17)(19)(21).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:320 (February 2002), amended LR 28:1414 (June 2002), LR 33:849 (May 2007).

#### §1311. Cooling

[formerly paragraph 22:09-6]

A. - A.7. ...

B. Cooked potentially hazardous food shall be cooled:

1. to 70°F (21°C) from 135°F (57°C) within two hours of cooking or hot holding; and

B.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1)(a) and R.S. 40:5(2)(3)(5)(7)(15)(17)(19)(21).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:320 (February 2002), amended LR 28:1414 (June 2002), LR 33:849 (May 2007).

### Chapter 19. Food Display and Service

#### §1901. General

[formerly paragraph 22:12-1]

A. - C. ...

D. Food establishments which have a self-service buffet shall provide a sign posted at the location of the self-service buffet which encourages individuals to wash their hands prior to serving themselves. This requirement shall not be applicable to those types of food establishments which are not included in the definition of *food establishment* as per §§101.A and 305.A.1 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1)(a), R.S. 40:5(2)(3)(5)(7)(15)(17)(19)(21), and R.S. 40:5.5.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:323 (February 2002), amended LR 28:1417 (June 2002), LR 33:849 (May 2007).

### §1911. Special Requirements for Highly Susceptible Populations

A. - A.2.b.ii. ...

3. the following foods may not be served or offered for sale in a ready to eat form:

a. raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;

b. a partially cooked animal food such as lightly cooked fish, rare meat, soft cooked eggs that are made from raw shell eggs, and meringue; and

c. raw seed sprouts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1)(a) and R.S. 40:5(2)(3)(5)(7)(15)(17)(19)(21).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:323 (February 2002), amended LR 28:1417 (June 2002), LR 33:849 (May 2007).

### Chapter 35. Insects and Rodent Control

#### §3505. Openings

[formerly paragraph 22:24-3]

A. Openings to a portion of the building that is part of the food establishment, or retail food store/market, or to the outdoors shall be protected against the entry of insects and rodents by:

A.1. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1)(a), R.S. 40:5(2)(3)(5)(7)(15)(17)(19)(20)(21), and R.S. 40:4(A)(9).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:331 (February 2002), amended LR 28:1425 (June 2002), LR 33:849 (May 2007).

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

0705#083

### RULE

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

Seafood Preparation and Handling  
(LAC 51:IX.305 and 323)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the state health officer acting through the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, pursuant to the authority in R.S. 40:4(A)(1), R.S. 40:4(A)(6), R.S. 40:5, and R.S. 40:5.3, amended Title 51, Part IX (Marine and Fresh Water Animal Food Products). The proposed changes will result in code provisions which are consistent with the National Shellfish Sanitation Program (NSSP) Model Ordinance. The NSSP is the federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption.

**Title 51**  
**PUBLIC HEALTH—SANITARY CODE**  
**Part IX. Marine and Fresh Water Animal Food**  
**Products**

**Chapter 3. Preparation and Handling of Seafood for Market**

**§305. Sewage Disposal on Shellfish Boats**  
**[formerly paragraph 9:007]**

A. Owners of all vessels in which persons are engaged in the handling of shellfish from the planting or growing grounds, shall provide their vessels with suitable receptacles of adequate size and type having a capacity of at least 2 gallons for each person on the boat, in which the extract, both solid and liquid, of persons using such boats, shall be received. The contents of such receptacles shall be disposed of either by means of the sewerage system of a municipality, by incineration, or by burial in the ground at points sufficiently removed from the banks of streams or tidal waters to prevent the pollution of the waters thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1), R.S. 40:4(A)(6), R.S. 40:5(2)(3)(5)(7)(9)(15)(17)(19)(20)(21), and R.S.40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1302 (June 2002), amended LR 33:850 (May 2007).

**§323. Tags**  
**[formerly paragraph 9:051]**

- A. - B.3 ...  
4. harvest area as defined by Office of Public Health;  
5. - 6.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5(2)(3)(5)(7)(15)(17)(19)(20)(21), and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1308 (June 2002), amended LR 28:1591 (July 2002), amended LR 33:850 (May 2007).

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

0705#082

**RULE**

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

All Inclusive Care for the Elderly  
(LAC 50:XXIII.501, 505 and 1301)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services has amended LAC 50:XXIII.501, 505 and 1301 in the Medical, Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part XXIII. All Inclusive Care for the Elderly**  
**Chapter 5. Recipient Enrollment**  
**§501. Eligibility**

- A. - C.6. ...

D. A PACE organization shall assess the potential participant to ensure that he or she can be cared for appropriately in a community setting and that he or she meets all requirements for PACE eligibility.

- E. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:247 (February 2004), amended LR 33:850 (May 2007).

**§505. Disenrollment**

A. A PACE organization shall submit proposed denial of enrollment determinations of applicants for health and safety reasons and all involuntary disenrollments of participants to DHH for review prior to notifying applicants/participants of such adverse decisions. The department shall review denials of PACE enrollment eligibility and disenrollments in a timely manner.

- B. - B.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:247 (February 2004), amended LR 33:850 (May 2007).

**Chapter 13. Reimbursement**

**§1301. Payment**

- A. - B. ...

C. Medicaid payment to a PACE organization on behalf of a Medicaid-eligible participant shall be a prospective monthly capitated amount that is equal to or less than the amount that would otherwise have been paid under the state plan if the participant was not enrolled under the PACE program.

1. Initially, each site specific upper payment limit shall be calculated for each state fiscal year using service area data, by zip code, from actual paid fee-for-service claims for populations who are age 55 or older in nursing facilities and in home and community based waiver and state plan services that utilize nursing facility level of care and serve people age 55 or older.

2. Site specific upper payment limits and Medicaid premiums for PACE shall be periodically calculated in accordance with the approved state plan methodology for such calculation, including trending of historical data. Premiums for every PACE organization in the state will be based on upper payment limits.

3. ...

4. No retroactive capitated payments shall be made.

- D. - D.2. ...

E. Medicaid payment to a PACE organization shall be made for each Medicaid-eligible participant who is identified on Medicaid files as linked to the PACE provider and is enrolled for the subsequent month.

1. Enrolled participants are those who have signed an enrollment agreement and who have been linked by Medicaid to the PACE provider.

- E.2. - I. ...

J. A Medicaid PACE participant, who is in a nursing facility reimbursed by PACE on his/her behalf, shall be responsible for payment of patient liability.

1. ...

2. The patient liability obligation for Medicaid participants begins the day it is determined by the PACE provider that the nursing facility stay is permanent.

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:250 (February 2004), amended LR 33:850 (May 2007).

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

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

0705#097

## RULE

### Department of Public Safety and Corrections Corrections Services

#### Inmate Mail and Publications (LAC 22:I.313)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), the Department of Public Safety and Corrections, Corrections Services, hereby repeals the contents of §313, entitled "Correspondence and Packages: Adult Inmates" and re-promulgates it with the title of "Inmate Mail and Publications".

Certain publications have indicated that the inmate mail system has not been effectively monitored. As a result, threats of inmates identified as terrorist and other high-risk inmates are using the mail and verbal communications to conduct terrorist or criminal activities while incarcerated. Therefore, the department determined that failure to adopt an amended version of this regulation as an Emergency Rule would have resulted in a negative impact on the public's health safety and welfare. Therefore, the Emergency Rule was adopted on January 5, 2007. This publication gives notice of the department's intent to make the Rule final, pursuant to R.S. 49:950 et seq.

#### Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part I. Corrections

#### Chapter 3. Adult and Juvenile Services

#### Subchapter A. General

#### §313. Inmate Mail and Publications

A. Purpose. To establish the secretary's policy regarding inmate mail privileges, including publications, at all adult institutions.

B. Applicability. Chief of operations, assistant secretary, regional wardens, and wardens. It is each warden's responsibility to implement this regulation and convey its contents to the inmate population and affected employees.

C. Notice. Staff at each reception and diagnostic center or unit handling initial reception and diagnostic functions shall inform each inmate in writing promptly after arrival of the department's policy for handling of inmate mail, utilizing

the Notification of Mail Handling form. This form will be filed in the inmate's record.

1. The current inmate population in DPS&C facilities is required to complete Attachment A upon the issuance of this revision to department regulations.

2. Pending full implementation of the canteen/package initiative, institutions are authorized to follow the existing regulation concerning packages.

#### D. Definitions

*DPS&C Facility*—includes, for the purpose of this regulation, state operated prison facilities, Winn Correctional Center and Allen Correctional Center.

*Farm Mail Correspondence*—inmate to inmate mail when housed at the same institution.

*Indigent Inmates*—those who do not have sufficient funds in the appropriate account(s) at the time of their request for indigent services and/or supplies to fully cover the cost of the requested services or supplies.

*Nudity*—pictorial depiction of buttocks, genitalia or female breasts (with the nipple or areola exposed).

*Privileged Correspondence*—mail to or from—

- a. identifiable courts;
- b. identifiable prosecuting attorneys;
- c. identifiable probation and parole officers, Parole Board and Pardon Board;
- d. state and local executive officers;
- e. identifiable attorneys;
- f. secretary, deputy secretary, chief of staff, undersecretary, assistant secretary, other officials and administrators of grievance systems of the department;
- g. local, state, or federal law enforcement agencies and officials.

*Publication*—book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, newspaper, magazine/newspaper clipping, article printed from the Internet, plus other materials addressed to a specific inmate such as advertising brochures, flyers, and catalogs.

*Sexually Explicit Material*—any book, pamphlet, magazine, or printed matter however reproduced, which contains any picture, photograph, drawing or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, sadomasochistic abuse, bestiality and homosexuality. Explicit sexual material also includes that which contains detailed verbal descriptions or narrative accounts of deviant sexual behavior. (A publication will not be prohibited solely because it contains pictorial nudity that has a medical, educational or anthropological purpose).

*Sexually Explicit Features*—the publication contains depictions of nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one-time issues. A publication will not be prohibited solely because it contains pictorial nudity that has a medical, educational or anthropological purpose.

E. Policy. It is the secretary's policy that inmates may communicate with persons or organizations subject to the limitations necessary to protect legitimate penological objectives, (including but not limited to deterrence of crime, rehabilitation of inmates, maintenance of internal/external security of an institution, or maintenance of an environment

free of sexual harassment), to prevent the commission of a crime, or to protect the interests of crime victims.

F. Inmate Correspondence. Inmates may write and receive letters subject to the following provisions.

1. Frequency. There shall be no limit placed on the number of letters an inmate may write or receive at personal expense and no limit placed on the length, language, or content except when there is reasonable belief that limitation is necessary to protect public safety, or institutional order, including restrictions relative to what may be reasonably stored in space provided and security. Inmates in segregation can write and receive letters on the same basis as inmates in general population.

2. Timely Handling. All mail, incoming and outgoing, shall be handled without unjustified delay. Letters should generally not be held more than 48 hours. This does not prohibit the holding of mail for inmates who are temporarily absent from the institution and does not include weekends and holidays or emergency situations. When mail is received for an inmate who has been transferred to another institution or released, the institution where the mail is received should attempt to forward the mail to him. The collection and distribution of mail is never to be delegated to an inmate. Mail will be given directly to the receiving inmate by an employee.

3. Correspondence. An inmate may write to anyone except:

a. victim of any criminal offense for which the inmate has been convicted or for which disposition is pending, except in accordance with specific procedures established by the warden in conjunction with the Crime Victims Services Bureau;

b. any person under the age of 18 when the person's parent or guardian objects verbally or in writing to such correspondence;

c. any person whom the inmate is restrained from writing to by court order;

d. any person who has provided a verbal or written request to not receive correspondence from an inmate;

e. any other person, when prohibiting such correspondence is generally necessary to further the substantial interests of security, order, or rehabilitation.

4. Costs of Correspondence. Each inmate shall pay personal mailing expenses, except an indigent inmate. An indigent inmate shall have access to postage necessary to send two personal letters per week, postage necessary to send out approved legal mail on a reasonable basis and basic supplies necessary to prepare legal documents. A record of such access shall be kept and the indigent inmate's account shall reflect the cost of the postage and supplies as a debt owed in accordance with department regulations. Stationary, envelopes and stamps shall be available for purchase in the canteen.

5. Outgoing General Correspondence and Farm Mail

a. Review, Inspection and Rejection. Outgoing general correspondence and farm mail shall not be sealed by the inmate and may be read and inspected by staff. The objectives to be accomplished in reading outgoing mail differ from the objectives of inspection. In the case of inspection, the objective is primarily to detect contraband. The reading of mail is intended to reveal, for example, escape plots, plans to commit illegal acts, or plans to violate

institution rules or other security concerns. Outgoing general correspondence and farm mail may be restricted, confiscated, returned to the inmate, retained for further investigation, referred for disciplinary proceeding or forwarded to law enforcement officials, if review discloses correspondence or materials which contain or concern:

i. the transport of contraband in or out of the facility;

ii. plans to escape;

iii. plans for activities in violation of facility or department rules;

iv. information which, if communicated, would create a clear and present danger of violence and physical harm to a human being;

v. letters or materials written in code or a foreign language when the inmate understands English, (unless the warden or designee determines that the recipient is not fluent in English);

vi. mail which attempts to forward unauthorized correspondence to a third party;

vii. threats to the safety and security of staff, other inmates or the public, facility order or discipline or rehabilitation, (including racially inflammatory material);

viii. sexually explicit material;

ix. other general correspondence for which rejection is reasonably related to a legitimate penological interest.

b. Notice of Rejection. The inmate sender shall be notified within three working days, in writing, of the correspondence rejection and the reason therefore on the Incoming/Outgoing General Correspondence and Farm Mail Notice of Rejection form. Any further delay in notification will be based on ongoing investigation which would be compromised by notification. Rejections are appealable through the Administrative Remedy Procedure.

c. Limitations on Restrictions. Any restrictions imposed on outgoing general correspondence and farm mail shall be unrelated to the suppression of expression and may not be restricted solely based on unwelcome or unflattering opinions. Communication of malicious, frivolous, false, and/or inflammatory statements or information, the purpose of which is reasonably intended to harm, embarrass, or intimidate an employee, visitor, guest or inmate will be rejected. This shall not apply to information and/or statements communicated for the express purpose of obtaining legal assistance.

d. Procedures for Mailing. Outgoing general correspondence and farm mail shall be inserted into the envelope and left unsealed by the inmate. All outgoing correspondence shall include:

i. a complete legible name and address of the party the correspondence is being sent to;

ii. the inmate's name, DOC number, housing unit, and the address of the institution which shall be written or typed on the upper left hand corner of the envelope. Drawings, writing, and marking on envelopes, other than return and sending address, are not permitted. All outgoing general correspondence shall be stamped in the mailroom to indicate it originates in a correctional institution.

6. Incoming General Correspondence

a. Review, Inspection, and Rejection. All incoming general correspondence must contain the return address of

the sender and the name and DOC number of the inmate. All mail to inmates must indicate that the sender is aware that the intended recipient is an inmate. All incoming general correspondence shall be opened and inspected for contraband, cash, checks, and money orders and is subject to being read. Any stick on label or stamp may be removed if it appears to contain contraband. All incoming general correspondence may be rejected if such review discloses correspondence or material(s) which would reasonably jeopardize legitimate penological interests, including, but not limited to, material(s) which contain or concern:

- i. the transport of contraband in or out of the facility;
- ii. plans to escape;
- iii. plans for activities in violation of facility or department rules;
- iv. plans for criminal activity;
- v. violations of this regulation or unit rules;
- vi. letters or materials written in code;
- vii. threats to the safety and security of staff, other inmates, or the public, facility order, or discipline, or rehabilitation, (including racially inflammatory material);
- viii. sexually explicit material;
- ix. greeting cards larger than 8" x 10" and greeting cards containing electronic or other non-paper parts, cards constructed in such a way as to permit concealment of contraband;
- x. other general correspondence for which rejection is reasonably related to a legitimate penological interest:

(a). incoming general correspondence containing any of the foregoing may be restricted, confiscated, returned to the sender, retained for further investigation, referred for disciplinary proceedings or forwarded to law enforcement officials.

b. Notice of Rejection. The inmate shall be notified within three working days, in writing, of the correspondence rejection and the reason therefore on the Incoming/Outgoing General Correspondence and Farm Mail Notice of Rejection form. Any further delay in notification will be based on ongoing investigation which would be compromised by notification. Rejections are appealable through the Administrative Remedy Procedure.

#### 7. Monetary Remittances

a. Incoming. Funds cannot be sent to inmates from other inmates or the families of other inmates. Funds cannot be sent to inmates from ex-inmates or their families, or employees and their families, except to purchase hobbycraft items properly supported by a hobbycraft agreement. Funds cannot be sent to inmates from unidentifiable sources. Exceptions to the above are only allowed with prior approval of the warden.

i. Money from permissible sources may be accepted in the following forms:

- (a). postal, bank, or commercially issued moneyorders;
- (b). government checks;
- (c). bank cashier checks;
- (d). checks drawn on federal, state, and local governments, political subdivisions, or public officials;
- (e). checks drawn on reputable commercial accounts;

(f). Automated Clearing House (ACH) transfers generated by authorized vendors approved by the secretary, such as Western Union.

ii. Money will not be accepted in the following forms.

(a). Cash received in the mail will be returned to the sender via regular or certified mail or agency check (type dependent on the amount of cash to be mailed).

(b). Personal checks received in the mail will be returned to the sender via regular mail.

(c). Checks payable to multiple parties will be returned to the sender via regular mail. (If approved by the warden or designee, the inmate may endorse the check prior to its return).

b. Upon discovery of cash, personal or multiple party checks in the mail, the inmate will be sent a Monetary Remittances Notice of Rejection form within three working days describing the contents of the mail, the date of its receipt and advising that he has seven working days to provide return postage. If return postage is not provided within seven working days, the postage will be provided by the unit. The inmate's banking account will be charged if funds are available. If funds are not available, a debt owed will be established pursuant to department regulations.

8. Identification of Privileged Correspondence: It is the responsibility and duty of institutional staff to verify the legitimacy of the official listed on the envelope. For purposes of this regulation, "identifiable" means that the official or legal capacity of the addressee is listed on the envelope and is verifiable. If not, then the letter is to be treated as general correspondence and an appropriate inquiry made into the inmate's intent in addressing the envelope as privileged mail.

9. All outgoing privileged correspondence shall include:

a. a complete legible name and address of the party the correspondence is being sent to;

b. the inmate's name, DOC number, housing unit, and the address of the institution on the upper left hand corner of the envelope. Drawings, writing, and marking on envelopes, other than return and sending address, are not permitted. All outgoing privileged correspondence shall be stamped in the mailroom to indicate it originates in a correctional institution:

i. outgoing privileged correspondence may be posted sealed, and will not be opened and inspected without express authorization from the warden or deputy warden as specified in Subsection F (11).

10. Incoming Privileged Correspondence. All incoming privileged correspondence must contain the return address of the sender and the name and DOC number of the inmate. All incoming privileged correspondence shall be opened in the presence of the inmate to whom it is addressed and inspected for the presence of cash, checks, money orders and contraband and to verify as unobtrusively as possible, that the correspondence does not contain material that is not entitled to the privilege. It may be opened and inspected outside the inmate's presence in the circumstances outlined in Paragraph F.11 of this regulation.

a. Inspection and Rejection: When, in the course of inspection, cash, checks, or money orders are found, they shall be removed and forwarded to the business office who



will verify the legitimacy of the transaction in accordance with department regulations.

b. If material is found that does not appear to be entitled to the privilege or if any of the circumstances outlined in Paragraph F.11 exist, the mail may be restricted, confiscated, returned to sender, retained for further investigation, referred for disciplinary proceedings or forwarded to law enforcement officials.

c. Notice of Rejection. The inmate shall be notified within three working days, in writing, of the correspondence rejection and the reason therefore on the Privileged Correspondence Notice of Rejection form describing the reason for the rejection and advising that he has seven working days to determine the disposition of the correspondence. Rejections are appealable through the Administrative Remedy Procedure.

d. Accidental Opening. If privileged correspondence is opened accidentally, outside the presence of the inmate, the envelope shall be immediately stapled or taped closed and the envelope marked "Accidentally Opened" along with the date and employee's initials. An unusual occurrence report will be completed.

11. Mail Precautions. The wardens and deputy wardens are authorized to open and inspect incoming and outgoing privileged mail outside the inmate's presence in the following circumstances:

a. letters that are unusual in appearance or appear different from mail normally received or sent by the individual or public entity;

b. letters that are of a size or shape not customarily received or sent by the individual or public entity;

c. letters that have a city and/or state postmark that is different from the return address;

d. letters that are leaking, stained, or emitting a strange or unusual odor or have a powdery residue;

e. when reasonable suspicion of illicit activity has resulted in a formal investigation and such inspection has been authorized by the secretary or designee.

12. Inmate Organizations: Inmate organizations must pay the postage costs for all of their outgoing mail. All outgoing mail must be approved by the inmate organization sponsor.

#### G. Procedures for Publications

1. Publications (see definition in Subsection D.) may be read and inspected to discover contraband and unacceptable depictions and literature. Unless otherwise provided by the rules of the institution, all printed matter must be received directly from the publisher. Multiple copies of publications for any one individual inmate are not allowed. Samples inserted in publications will be removed prior to delivery. Upon the effective date of the canteen/package initiative, books must be purchased through the canteen and will no longer be allowed to be sent through the mailroom.

2. Newspaper and magazine clippings (xerox copies allowed) as well as articles printed from the internet are considered publications for the purpose of review pursuant to this regulation. However, they are not required to originate from the publisher. A limit of five clippings/articles may be received within a piece of regular correspondence and the quantity received may be further limited by what can be reasonably reviewed for security reasons in a timely

manner. Multiple copies of the same clippings/articles for any one individual inmate are not allowed. Inclusion of clippings/articles in regular correspondence may delay the delivery.

3. Refusal of Publications: Printed material shall only be refused if it interferes with legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of inmates, maintenance of internal/external security of an institution or maintenance of an environment free of sexual harassment), or if the refusal is necessary to prevent the commission of a crime or to protect the interests of crime victims. This would include but not be limited to the following described categories.

#### a. Security Issues

i. Maps, road atlas, etc., that depict a geographic region that could reasonably be construed to be a threat to security;

ii. writings that advocate, assist or are evidence of criminal activity or facility misconduct;

iii. instructions regarding the ingredients or manufacturing of intoxicating beverages or drugs;

iv. information regarding the introduction of, or instructions in the use, manufacture, storage, or replication of weapons, explosives, incendiaries, escape devices or other contraband;

v. instructs in the use of martial arts;

vi. racially inflammatory material or material that could cause a threat to the inmate population, staff, and security of the facility;

vii. writings which advocate violence or which create a danger within the context of a correctional facility.

b. Sexually Explicit Material. It is well established in corrections that sexually explicit material causes operational concerns. It poses a threat to the security, good order and discipline of the institution and can facilitate criminal activity. Examples of the types of behavior that result from sexually explicit material include non-consensual sex, sexual molestation of other inmates or staff, masturbation or exposing themselves in front of staff and inappropriate touching or writing to staff or other forms of sexual harassment of staff and/or inmates.

i. Sexually explicit material can portray women (or men) in dehumanizing, demeaning and submissive roles, which, within an institutional setting, can lead to disrespect and the sexual harassment of female (or male) correctional staff. Lack of respect and control in dealing with inmates can endanger the lives and safety of staff and inmates.

ii. The viewing of sexually explicit material undermines the rehabilitation of offenders as it can encourage deviant, criminal sexual behavior. Additionally, once sexually explicit material enters an institution, it is impossible to control who may view it. When viewed by an incarcerated sex offender, it can undermine or interrupt rehabilitation efforts.

iii. Publications that depict nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one time issues will not be allowed.

c.i When screening publications for acceptability, the following categories shall be utilized:

(a). Category 1—presumption of non-acceptability;

(b). Category 2—those that need to be reviewed on a case-by-case basis prior to allowing them to be delivered to the recipient and subject to review by the regional warden;

(c). Category 3—presumption of acceptability.

ii. Publications can be added, deleted or moved from one category to another at the discretion of the secretary at any time.

iii. When an institution receives a Category 2 publication which has not already been ruled on by the regional wardens, the mailroom will send the inmate a Notice of Pending Review of Publication form and forward the publication to their regional warden who will determine acceptability. When an institution suspends delivery of an issue of a Category 3 publication, the regional warden is notified. The mailroom will send the inmate a Notice of Pending Review of Publication form. The regional wardens will determine if the publication should be moved to Category 2. When magazines are received that are not currently listed, the regional warden will be notified.

d. Procedures When Publication Is Refused. The inmate shall be notified within three working days of the refusal and the reason therefore on the Publications Notice of Rejection form describing the reason for the rejection and advising that he has seven working days to determine the publication's disposition. Rejections are appealable through the administrative remedy procedure. The institution should retain possession of the disputed item(s) until the exhaustion of administrative and judicial review.

#### H. Procedures for Photographs, Digital or Other Images

1. Inmates will not be allowed to receive or possess photographs or digital or other images that interfere with legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of inmates, maintenance of internal/external security of an institution, or maintenance of an environment free of sexual harassment), or to prevent the commission of a crime or to protect the interests of crime victims. This includes photographs, digital or other images which expose the genitals, genital area (including pubic hair), anal area, cheeks of the buttocks or female breasts (or breasts which are designed to imitate female breasts). These areas must be covered with garments which cannot be seen through.

2. Lingerie will not normally be acceptable whether transparent or not. Swimwear will only be acceptable if the overall context of the picture is reasonably related to activities during which swimwear is normally worn. Suggestive poses alone may be sufficient cause of rejection regardless of the type of clothing worn.

3. Each institution shall develop a procedure that serves to reasonably restrict an inmate's possession of multiple copies of the same photograph or digital or other image.

4. Hard backed and laminated photographs or digital or other images that are subject to alteration or modification may be rejected.

5. The term "photograph" includes other images such as those created by a digital imaging device or e-mails.

6. The inmate shall be notified within three working days, in writing, of the photograph rejection and the reason therefore on the Photographs Notice of Rejection form

describing the reason for the rejection and advising that he has seven working days to determine the photograph's disposition. Rejections are appealable through the Administrative Remedy Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833(A), *Guajardo v. Esteile*, 580 F.2d 748 (5th Cir. 1978).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 5:4 (January 1979), amended LR 10:803 (October 1984), LR 11:360 (April 1985), amended by the Department of Public Safety and Corrections, Corrections Services, LR 33:851 (May 2007).

Richard L. Stalder  
Secretary

0705#078

## RULE

### Department of Public Safety and Corrections Corrections Services

#### Prison Enterprises—Responsibilities and Functions (LAC 22:I.1101)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), the Louisiana Department of Public Safety and Corrections, Corrections Services, has adopted Section 1101, Responsibilities and Functions of Prison Enterprises, as a final Rule.

The purpose of the aforementioned regulation is to establish and outline the functions and responsibilities of the Division of Prison Enterprises.

#### Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part I. Corrections

#### Chapter 11. Prison Enterprises

#### §1101.

A. Purpose—to establish and outline the functions and responsibilities of the Division of Prison Enterprises.

B. Applicability—chief of operations, undersecretary, assistant secretary, wardens, the Director of Prison Enterprises and the Director of Probation and Parole. Each unit head shall ensure that appropriate procedures are in place to comply with the provisions of this regulation.

#### C. Definitions

*Agriculture*—cultivation of soil, production of crops, raising of livestock and management of natural resources.

*Aquacultural*—cultivation of natural produce of water such as fish and shellfish and their by-products.

*Crops*—food and fiber products that cover a broad range of goods from both processed and unprocessed bulk commodities. This includes but is not limited to soybeans, corn, wheat, rice, cotton, vegetables grasses and their by-products.

*Industrial Enterprise*—a manufacturing, distribution, production, assembly or warehousing operation that accommodates the direct or indirect exchange of goods.

*Livestock*—animals reared in an agricultural setting to make or produce food or to be used for labor and their by-products. This includes but is not limited to cattle, bulls, pigs, horses and birds.

*Marketing*—the process or technique of promoting, selling and distributing a product or service.

*Open Market*—the area of economic activity in which buyers and sellers come together and the forces of supply and demand affect prices, including agreements entered into by private treaty.

*Service Industries*—provision of inmate services for labor such as janitorial, bulk mailings, assembly and other labor-intensive work that utilizes Prison Enterprises' resources to accommodate customer requests.

*Silvicultural*—controlling the establishment, growth, composition, health and quality of forests and woodlands and their by-products through management, harvest and planting.

D. Policy

1. It is the secretary's policy that the Division of Prison Enterprises is responsible for developing and implementing policy and procedures for agricultural, aquacultural, crops, industrial enterprises, livestock, marketing, service industries and silvicultural programs that will utilize the department's resources to lower the cost of incarcerating inmates, provide work opportunities for inmates, and provide products and services to state and local agencies other political subdivisions, open market customers and other targeted customers.

E. General

1. The Director of Prison Enterprises is responsible for the following:

a. establishment and operation of all agricultural, aquacultural, crops, industrial enterprises, livestock, marketing, service industries and silvicultural programs;

b. development of budgets and plans of operation for all Prison Enterprises programs within the state;

c. procurement of all raw goods, supplies, commodities, breeding livestock, inventories, services, studies or experimental work in accordance with the Louisiana Procurement Code, Procurement of Services Rules and Regulations, executive orders, rules established by administrative law and all other applicable state and federal law;

d. purchase of commodities, including but not limited to agriculture commodities, prison industry commodities, and other commodities available from other state, federal and foreign governmental agencies in accordance with R.S. 15:1157(C);

e. sale of all Prison Enterprises products, commodities, livestock, and services through appropriate venues, including but not limited to direct sales to non-profit entities, governmental entities (i.e., other local, parish, state, federal and foreign governments), sealed bids, open market sales, private entities, auctions and other targeted customers in accordance with R.S. 15:1157(C).

2. Functional supervision at the field level relative to interface with unit activities and security requirements will be under the jurisdiction of the warden in accordance with ACA Standard 4-4006.

3. All funds received from the sale of products and services shall be deposited immediately upon receipt into the state treasury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1156.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary, LR 33:855 (May 2007).

Richard L. Stalder  
Secretary

0705#079

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

Imposition of Sanctions; Enforcement Actions;  
Advertising; Video Draw Poker Devices  
(LAC 42:VII.2325, 2927; IX.2919, 4103;  
XI.2407; XIII.2325 and 2927)

The Louisiana Gaming Control Board has amended LAC 42:VII.2325, Penalty Schedule, VII.2927, Advertising, IX.2919, Advertising Mandatory Signage, IX.4103, Enforcement Actions of the Board, XI.2407, Operation of Video Draw Poker Devices, III.2325, Penalty Schedule, 2927, Advertising, in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 42**

**LOUISIANA GAMING**

**Part VII. Pari-Mutuel Live Racing Facility Slot Machine  
Gaming**

**Chapter 23. Compliance, Inspections and  
Investigations**

**§2325. Sanctions**

A. - D. ...

E. Penalty Schedule

Section Reference	Description	Base Fine	Proscription Period (months)
* * *			
2927	Advertising	\$1,000	18
* * *			

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 26:1321 (June 2000), amended LR 27:2255 (December 2001), LR 28:1028 (May 2002), repromulgated LR 28:2371 (November 2002), amended LR 29:362 (March 2003), LR 31:1603 (July 2005), LR 33:856 (May 2007).

**Chapter 29. Operating Standards**

**§2927. Advertising**

A. ....

B. All letters accompanying the toll-free telephone number shall be in capital letters and the same size as the toll-free telephone number. The toll-free telephone number and letters shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the advertisement.

C. Exterior print advertising, including but not limited to billboards, shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/10 of the entire advertisement's

height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle. In the case of billboards, the rectangle containing the toll-free telephone number shall be a part of the billboard itself and not a separate add-on to the frame.

D. Interior print advertising, including but not limited to posters, banners and other forms of advertising intended to be viewed from within the licensed establishment and/or designated gaming area shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/20 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle.

E. Print advertising which is handheld or which is customarily viewed by the person holding the advertisement, including but not limited to newspapers, flyers, coupons and other forms of advertising shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/20 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle.

F. A licensee which is required to display the toll-free telephone number may seek approval from the Division for particular forms of print advertising on an individual basis. In those instances where the licensee seeks approval, the Division may in its discretion, approve the print advertisement in writing. The approved advertisement shall conform to the Division's written approval.

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 26:765 (April 2000), amended LR 33:856 (May 2007).

**Part IX. Landbased Casino Gaming**

**Subpart 1. Economic Development and Gaming Corporation**

**Chapter 29. Operating Standards Generally**

**§2919. Advertising; Mandatory Signage**

A. ....

B. All letters accompanying the toll-free telephone number shall be in capital letters and the same size as the toll-free telephone number. The toll-free telephone number and letters shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the advertisement.

C. Exterior print advertising, including but not limited to billboards, shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/10 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle. In the case of billboards, the rectangle containing the toll-free telephone number shall be a part of the billboard itself and not a separate add-on to the frame.

D. Interior print advertising, including but not limited to posters, banners and other forms of advertising intended to

be viewed from within the licensed establishment and/or designated gaming area shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/20 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle.

E. Print advertising which is handheld or which is customarily viewed by the person holding the advertisement, including but not limited to newspapers, flyers, coupons and other forms of advertising shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/20 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle.

F. A licensee which is required to display the toll-free telephone number may seek approval from the division for particular forms of print advertising on an individual basis. In those instances where the licensee seeks approval, the division may in its discretion, approve the print advertisement in writing. The approved advertisement shall conform to the division's written approval.

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 25:1953 (October 1999), amended LR 26:335 (February 2000), LR 33:857 (May 2007).

**Chapter 41. Enforcement Actions**

**§4103. Enforcement Actions of the Board**

- A. - B. ....
- C. Penalty Schedule

Section Reference	Description	Base Fine	Proscription Period (months)
***			
2919	Advertising	\$1,000	18
***			

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and R.S. 27:24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1974 (October 1999), amended LR 26:2307 (October 2000), LR 27:2255 (December 2001), repromulgated LR 28:344 (February 2002), amended LR 28:1029 (May 2002), LR 29:362 (March 2003), LR 29:2507 (November 2003), LR 31:1605 (July 2005), LR 33:857 (May 2007).

**Part XI. Video Poker**

**Chapter 24. Video Draw Poker**

**§2407. Operation of Video Draw Poker Devices**

- A. - C.2.e. ...
- D. Advertising
  - 1. - 4. ...

5. All letters accompanying the toll-free telephone number shall be in capital letters and the same size as the toll-free telephone number. The toll-free telephone number and letters shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the advertisement.

6. Exterior print advertising, including but not limited to billboards, shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/10 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle. In the case of billboards, the rectangle containing the toll-free telephone number shall be a part of the billboard itself and not a separate add-on to the frame.

7. Interior print advertising, including but not limited to posters, banners and other forms of advertising intended to be viewed from within the licensed establishment and/or designated gaming area shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/20 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle.

8. Print advertising which is handheld or which is customarily viewed by the person holding the advertisement, including but not limited to newspapers, flyers, coupons and other forms of advertising shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/20 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle.

9. A licensee which is required to display the toll-free telephone number may seek approval from the division for particular forms of print advertising on an individual basis. In those instances where the licensee seeks approval, the division may in its discretion, approve the print advertisement in writing. The approved advertisement shall conform to the division's written approval.

10. The Penalty for any violation of this Section shall be \$500.

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 Department of Public Safety and Corrections, Gaming Control Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 30:267 (February 2004), repromulgated LR 30:441 (March 2004), amended LR 33:857 (May 2007).

### Part XIII. Riverboat Gaming

#### Subpart 2. State Police Riverboat Gaming Division

#### Chapter 23. Compliance, Inspections and Investigations

#### §2325. Imposition of Sanctions

A. - D. ...

E. Penalty Schedule

Section Reference	Description	Base Fine	Proscription Period (Months)
***			
2927	Advertising	\$1,000	18
***			

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 26.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:1318 (June 2000), LR 27:2255 (December 2001), LR 28:1029 (May 2002), LR 29:363 (March 2003), LR 31:1606 (July 2005), LR 33:858 (May 2007).

#### Chapter 29. Operating Standards

#### §2927. Advertising

A. ...

B. All letters accompanying the toll-free telephone number shall be in capital letters and the same size as the toll-free telephone number. The toll-free telephone number and letters shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the advertisement.

C. Exterior print advertising, including but not limited to billboards, shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/10 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle. In the case of billboards, the rectangle containing the toll-free telephone number shall be a part of the billboard itself and not a separate add-on to the frame.

D. Interior print advertising, including but not limited to posters, banners and other forms of advertising intended to be viewed from within the licensed establishment and/or designated gaming area shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/20 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle.

E. Print advertising which is handheld or which is customarily viewed by the person holding the advertisement, including but not limited to newspapers, flyers, coupons and other forms of advertising shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/20 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle.

F. A licensee which is required to display the toll-free telephone number may seek approval from the division for particular forms of print advertising on an individual basis. In those instances where the licensee seeks approval, the division may in its discretion, approve the print advertisement in writing. The approved advertisement shall conform to the division's written approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended

by the Department of Public Safety and Corrections, Gaming Control Board, LR 33:858 (May 2007).

H. Charles Gaudin  
Chairman

0705#021

## RULE

### Department of Public Safety and Corrections Office of State Police

#### Reporting Requirements for Category 3 or Higher Hurricane (LAC 33:V.11101, 11103, and 11105)

Under the authority of R.S. 32:1504, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted regulations for reporting requirements of hazardous materials for Category 3 or higher hurricane in LAC 33:V.Subpart 2, 11101, 11103, and 11105 (Log #DPS001).

This Rule provides a process for the reporting of information regarding hazardous materials that are in transit and/or temporarily stored at a facility and that could present a threat to human health and the environment if compromised during a Category 3 or higher hurricane. Hurricanes Katrina and Rita illustrated the need to be able to accurately account for all hazardous material in this state especially in times of emergency. The state must be aware of the exact nature, quantities, and location of all hazardous materials in this state prior to any potential release under these circumstances. This Rule is being promulgated by the Department of Public Safety in collaboration with the Department of Environmental Quality. The basis and rationale for this Rule are to protect public health and the environment during times of emergency. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### Title 33

#### ENVIRONMENTAL QUALITY

#### Part V. Hazardous Waste and Hazardous Materials

#### Subpart 2. Department of Public Safety and Corrections—Hazardous Materials

#### Chapter 111. Reporting Requirements for Category 3 or Higher Hurricane

##### §11101. Purpose

A. The purpose of this Chapter is to establish procedures for the reporting of information regarding hazardous materials that are in transit and/or temporarily stored at a facility and that could present a threat to human health and the environment if compromised during a Category 3 or higher hurricane.

AUTHORITY NOTE: Promulgated in accordance with R.S.32:1504.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 33:859 (May 2007).

##### §11103. Applicability

A. This Chapter applies to all persons who are engaged in the transportation of hazardous materials by railcars, vessels, or barges, or the temporary storage of hazardous materials in any storage vessel not permanently attached to the ground, that is within the confines of a parish affected, or

projected to be affected, by a Category 3 or higher hurricane for which a mandatory evacuation order has been issued.

AUTHORITY NOTE: Promulgated in accordance with R.S.32:1504.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 33:859 (May 2007).

##### §11105. Requirements for Reporting

A. Notification shall be given to the DPS, via electronic submittal, to the 24-hour Louisiana Emergency Hazardous Materials Hotline email address at [emergency@la.gov](mailto:emergency@la.gov) within 12 hours of a mandatory evacuation order issued by the proper parish authorities.

##### B. Definitions

*Hazardous Materials*—those materials listed on the EHS list, 40 CFR Part 355, Appendix A.

*Temporary Storage*—the containment of hazardous materials in a container that is portable. This provision does not cover those hazardous materials that are stored in pipelines or any other storage vessel permanently attached to the ground.

##### C. Mechanism and Responsibilities

1. Within 12 hours of an order of evacuation issued by local parish authorities, persons subject to the provisions of this Chapter shall report the following:

a. the exact nature of, and the type, location, and relative fullness of the container (i.e., full, half-full, or empty) of all hazardous materials that are located within a parish subject to the evacuation order;

b. the primary and secondary contact person's phone, e-mail, and fax number; and

c. whether the facility will be sufficiently manned such that post-event assessments will be performed by company personnel (as soon as safely practicable) and that any releases and/or hazardous situations will be reported in accordance with existing Louisiana Department of Environmental Quality (LDEQ) and State Police reporting requirements.

2. For those materials that are stored, it shall be necessary to only report those hazardous materials that were not reported in the annual Superfund Amendments and Reauthorization Act (SARA) inventory report and those that are in excess of what is typically stored at the facility.

3. Within a reasonable period of time, persons subject to the provisions of this Chapter shall perform a post-event assessment of those hazardous materials that were actually present in the affected area and to what degree, if any, those materials were compromised by said event and their current condition.

4. Both the DPS and Louisiana Department of Environmental Quality (LDEQ) shall have access to this information.

D. This Chapter does not extinguish any obligation or supersede any other federal or state law requiring reporting of information on hazardous materials.

AUTHORITY NOTE: Promulgated in accordance with R.S.32:1504.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 33:859 (May 2007).

Jill P. Boudreaux  
Acting Undersecretary

0705#043

## RULE

### Department of Revenue Policy Services Division

#### Exemption from Tax on Corporations (LAC 61:I.1140)

Under the authority of R.S. 47:287.501, R.S. 47:1511, R.S. 47:287.785 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division amends LAC 61:I.1140 to disallow the exemption of unrelated business taxable income of organizations meeting the qualification of I.R.C. Sections 501 and 401(a) and to remove the requirement that certain banks be organized under the laws of the state of Louisiana.

Due to the exclusive error of the Department of Revenue, non-profit organizations with unrelated business taxable income in Louisiana have not been taxed on that income. The department will begin taxing this unrelated business taxable income as required by R.S. 47:287.501 beginning January 1, 2008. The department will also, in keeping with proper statutory construction, remove the requirement that banks subject to the "shares tax" be organized under the laws of the state of Louisiana to qualify for the exemption.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 11. Income: Corporation Income Tax §1140. Exemption from Tax on Corporations

A. Generally, organizations meeting the qualifications included under I.R.C. Sections 501 and 401(a) are exempt from federal and Louisiana income tax liability.

B. However, organizations meeting the qualifications under I.R.C. Sections 501 and 401(a) are not exempt from taxation on unrelated business taxable income or income not included under I.R.C. Sections 501 and 401(a) for federal income tax purposes. Since unrelated business taxable income is not exempt from federal income tax, it is not exempt from Louisiana income tax. The Department of Revenue will begin enforcing this requirement of R.S. 47:287.501 for all taxable periods beginning on and after January 1, 2008.

#### C. Exceptions

1. Mutual savings banks, national banking corporations, building and loan associations, and savings and loan associations are wholly exempt from the tax imposed by this Chapter regardless of where they are organized.

2. Banking corporations, regardless of where they are organized, which are required by other laws of this state to pay a tax for their shareholders, or whose shareholders are required to pay a tax on their shares of stock are also wholly exempt. Banking corporations, other than those described above, are not exempt from the corporation income tax.

D. An organization claiming a total or partial exemption under R.S. 47:287.501(A) as an organization described in I.R.C. Sections 501 or 401(a) is required to file an income tax return in the same manner as any other corporation. To claim a partial exemption, the organization must submit a copy of the Internal Revenue Service ruling establishing its

exempt status under I.R.C. Sections 501 or 401(a) with its return, report any income subject to federal income tax on its Louisiana return, and include with the return a statement that all income not reported on the Louisiana return is exempt from federal income tax under I.R.C. Sections 501 or 401(a). To claim a total exemption the organization must submit a copy of the Internal Revenue Service ruling establishing its exempt status under I.R.C. Sections 501 or 401(a) with its return and include with its return a statement that none of its income was subject to federal income tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.501.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Department of Revenue, Policy Services Division, LR 30:485 (March 2004), amended LR 33:860 (May 2007).

Cynthia Bridges  
Secretary

0705#069

## RULE

### Department of Revenue Policy Services Division

#### Issuance and Cancellation of a Lien; Fees (LAC 61:I.5302)

Under the authority of R.S. 47:295, R.S. 47:1511, R.S. 47:1577, and R.S. 47:1578 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division has amended LAC 61:I.5302 to clarify when the secretary may release certain property subject to the recorded lien. Additionally, this Rule restricts taxpayers to only one approved offer in compromise in a 10-year period and require offers in compromise applications to be accompanied by a nonrefundable payment of at least 10 percent of the amount offered.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 53. Miscellaneous Fees

#### §5302. Issuance and Cancellation of a Lien; Fees

A. - C.3. ...

4. when the amount paid to the secretary in partial satisfaction of the liability is not less than the value of the interest of the state of Louisiana in the part of the property to be released or the secretary determines that the interest of the state of Louisiana in the part to be released has no value. This provision is subject to approval by the Board of Tax Appeals.

D. - E. ...

F. Offers in Compromise

1. The secretary will only accept one offer from any applicant in a 10-year period.

2. A nonrefundable payment of at least 10 percent of the amount offered must accompany an Offer in Compromise application.

G. The department shall assess a fee against the taxpayer for the filing of a tax lien and the cancellation of a lien. The

amount of the fee to be assessed against the taxpayer shall be determined according to the amount charged the department by the parish in which the lien is filed. In the event a lien is filed in more than one parish for the same taxes, each lien shall be treated separately and the total charges per parish for the liens shall be assessed against the taxpayer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:295, R.S. 47:1511, R.S. 47:1577, and R.S. 47:1578.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:347 (February 2002), amended LR 30:1045 (May 2004), LR 33:860 (May 2007).

Cynthia Bridges  
Secretary

0705#007

## RULE

### Department of Revenue Policy Services Division

#### Partnerships 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 amends LAC 61.I.1401.

The purpose of this Rule is to change the requirement to withhold when the partner in a partnership is a partnership itself. This change will prevent such partnerships from being included on composite returns. It is the opinion of the department that this change will enhance compliance with this Rule.

### Title 61

### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 14. Income: Partnerships

#### §1401. Partnerships Composite Return Requirement, Composite Payment Requirements, Exceptions

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

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

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

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

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

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

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

#### B. Persons to be Included in a Composite Return

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

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

b. all nonresident partners, other than corporations, partnerships 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 and partners, who are themselves partnerships, cannot be included in composite returns filed by a partnership. These 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, partnerships and tax-exempt trusts, may be included in a composite return.

#### C. Composite Return Requirements

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

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

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

a. the name of the partner;

b. the address of the partner;

c. the taxpayer identification number of the partner;

d. the partner's distributive share; and

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

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

a. the name of the partner;

b. the address of the partner;

c. the taxpayer identification number of the partner;

d. the partner's distributive share.

5. The filing of a true, correct, and complete partnership composite return will relieve any nonresident partner properly included in the composite return from the



duty to file an individual return, provided that the nonresident partner does not have any income from Louisiana sources other than that income reported in the composite return. Inclusion in a partnership composite return shall not relieve a resident partner of the obligation to file a Louisiana income tax return.

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

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

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

#### D. Composite Payment Requirement

1. All partnerships engaging in activities in this state that have nonresident partners that are not corporations, partnerships or tax-exempt trusts shall make composite payments on behalf of all of their nonresident partners, other than corporate partners and partners, who are themselves partnerships, 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 C.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), amended LR 33:861 (May 2007).

Cynthia Bridges  
Secretary

0705#068

## RULE

### Department of Transportation and Development Office of Weights and Standards

Violation Ticket Review Committee  
(LAC 73:I.1201 and 1216)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Transportation and Development hereby amends Chapter 12 of Title 73 entitled "Violation Ticket Review Committee", in accordance with R.S. 32:389.

#### Title 73

### WEIGHTS, MEASURES AND STANDARDS

#### Part I. Weights and Standards

#### Chapter 12. Violation Ticket Review Committee

#### §1201. Composition of Violation Ticket Review Committee

A. One representative of the Office of Management and Finance to be appointed by the undersecretary of management and finance.

B. One representative of the DOTD Legal Section to be appointed by the general counsel.

C. One representative of the Office of Operations to be appointed by the assistant secretary.

D. Four representatives of the Office of Engineering to be appointed by the chief engineer.

E. The DOTD Weights and Standards Administrator or his designee shall be a non-voting member.

F. Four of seven voting members present is a quorum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:389 (D).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Weights, Measures and Standards, LR 22:372 (May 1996), amended LR 28:522 (March 2002), LR 33:863 (May 2007).

#### §1216. Consideration by Review Panel

A. - C. ...

D. The review panel shall be convened upon the motion of the chairman a minimum of every 90 days. The department shall provide all information necessary or required concerning the tickets reviewed by the review panel. The protestor, upon his request, may appear at the meetings of the review panel.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:389 (D).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Weights, Measures and Standards, LR 22:372 (May 1996), amended LR 28:523 (March 2002), LR 33:863 (May 2007).

Johnny B. Bradberry  
Secretary

0705#059

## RULE

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

#### Bait—Special Dealer's Permit (LAC 76:VII.329)

The Wildlife and Fisheries Commission has amended LAC 76:VII.329, which provides for a special bait dealer's permit program. Authority to establish these regulations is vested in the commission by R.S. 56:497(C).

#### Title 76

#### WILDLIFE AND FISHERIES

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

#### Chapter 3. Saltwater Sport and Commercial Fishery §329. Special Bait Dealer's Permit

A. Policy. The special bait dealer's permit is intended solely for the benefit of the recreational fishing public which desires to use live shrimp and live croaker as bait during the closed season between the spring and fall shrimp seasons. Its purpose is to allow the uninterrupted operation of those commercial establishments which sell live bait shrimp and live croaker to the fishing public during the spring and fall shrimp season. The permit is not intended for the direct use of recreational fishermen, charter boats, commercial fishermen who sell dead shrimp or croaker, or for any other entity which may wish to catch shrimp or croaker for their own use during the closed season.

##### B. Application

1. Applications for the special bait dealer's permit will be accepted from January 1 through April 30 of each year. All applications should be mailed to the department via certified mail.

2. Applications will be accepted only from the owner of an existing business which sells or plans to sell live bait to recreational fishermen.

3. Applications must be notarized and made on forms provided by the department; all information requested must be provided before the application will be processed.

4. Applicants must show proof of having acquired all necessary licenses and permits before the permit will be issued. This includes, if relevant, boat registration, vessel license, gear license, commercial fishing licenses, and name of fisherman; wholesale/retail seafood dealers license, state sales tax number, and a copy of the applicant's and the fisherman's valid drivers license. A background check for wildlife violations of the applicant and the fisherman will be made. Any person convicted of any Class 2 or greater wildlife or fisheries violation within the previous three years prior to the date of application shall not qualify to obtain a special bait dealer's permit or be onboard any vessel engaged in permitted activities.

5. Beginning in 2008, applicant must post a \$1,000 cash bond before the permit is issued. This bond will be forfeited if the permittee, his employee, or his contractor violates any provision of the rules and regulations concerning the special bait dealer's permit or if the permittee, his employee, or his contractor violates any

commercial fishing law or regulation while operating under the permit.

6. Before the permit is issued an agent of the department must inspect the facilities of the applicant and verify that the applicant is operating a commercial establishment which sells live shrimp or live croaker to the fishing public for use as bait, and that the applicant does have facilities to maintain live shrimp or croaker. Notice to the public must be posted that live bait shrimp or croaker are available for sale. The applicant must have onshore facilities, including tanks with a minimum capacity of 500 gallons, available to hold live shrimp or live croaker. These tanks must have provisions for aeration and/or circulation of the water in which live shrimp or croaker are held prior to sale. In determining total tank capacity of onshore facilities, the agent shall not count any tank with a capacity of less than 50 gallons.

7. Only the applicant, his designated employee, or his contractor may operate under the permit. At the time of application, the applicant will specify the vessel and who will be working under the permit. Should the vessel or these persons change, the applicant shall submit an amended application listing the vessel or those persons and be in receipt of an approved amended permit before the new vessel or persons operate under the permit. The permit is not transferable to any other person or vessel. The entire original permit must be carried on the vessel while in operation.

8. No person shall transfer any shrimp or croaker taken under a permit from one vessel to another.

##### C. Operations

1. Only the vessel and captains listed in the permit shall be used with the permit. Live wells, aeration tanks, and other vessel facilities to maintain live shrimp or croaker must be carried on or built into this vessel; it must be used for both taking and transporting the live shrimp or croaker. The vessel must have a minimum of one compartment or tank with a minimum capacity of 50 gallons. No other vessel may be used under the permit. Signs which identify the vessel as working under the special bait dealer's permit shall be posted on the vessel. These signs shall be visible from either side of the vessel and from the air; the word "BAIT" and the permit number shall be placed on these signs in letters at least 12 inches high.

2. Permitted gear is limited to one trawl not to exceed 25 feet along the cork line 33 feet along the lead line or two skimmer nets having an individual net frame size not more than 12 and 1/2 feet measured horizontally or 12 feet measured vertically or 17 feet 4 inches measured diagonally. These are the only gears which can be used or carried aboard the permitted vessel while the vessel is operating under the permit; no other commercial fishing gear may be on the vessel when it is being used under permit.

3. No more than 2 gallons of dead shrimp or croaker or combination thereof may be aboard the vessel while it is operating under the permit. All dead shrimp or croaker or combination thereof in excess of 2 gallons must be immediately returned to the water. Shrimp or croaker dying

in onshore holding facilities may be sold for bait use only, in lots not to exceed 16 ounces in weight.

4. Bait shrimp or croaker may be taken only from official sunrise to official sunset; no night fishing is allowed under this permit.

5. The entire original permit must be in the possession of the person operating the vessel while it is engaged in taking shrimp or croaker under the terms of the permit.

6. Each time the permit is used the permittee must notify the department by contacting the communications section on the designated toll free telephone number provided on the permit and recording the confirmation number received. Before the vessel departs the dock under the permit, the department must be advised of the time of departure and the sub-basin code corresponding to the department's trip ticket sub-basin map in which trawling or skimming will take place; immediately after the permitted vessel returns to the dock the department must be notified of the time of return by contacting the communications section on the designated toll free telephone number provided on the permit.

7. The permittee shall maintain an up-to-date record of the activities conducted under the permit on forms provided by the department for that purpose. These records shall be kept onboard the vessel and made available for inspection by agents of the department upon request by said agents at any time and shall include the permittee's name and permit number, date, departure time, fishing location, gear used, confirmation number, return time, and number of live shrimp or live croaker harvested. All applicable record information shall be completed before fishing operations begin. In addition, any agent of the department shall be allowed to make an on site inspection of any facilities operating under the permit, at any time. Permittee shall submit to the department, not later than September 1 following the live bait season, this record of permit activities on forms provided by the department. Nothing herein this Section shall exempt the permittee from trip ticket reporting requirements as provided for in R.S. 56:306.4.

**D. Penalties**

1. No person shall violate any provision of this Section. Violations of any provision of this Section shall constitute a Class 4 violation as defined in R.S. 56:34.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 56:326.3 and 56:497(C).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, and Wildlife and Fisheries Commission, LR 3:210 (April, 1977), amended LR 15:867 (October, 1989), LR 19:215 (February, 1993), LR 23:86 (January, 1997), LR 33:864 (May 2007).

Earl P. King, Jr.  
Chairman

0705#028

**RULE**

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

**Paddlefish (LAC 76:VII.137)**

The Wildlife and Fisheries Commission has amended the following Section on paddlefish (*Polyodon spathula*) in portions of Louisiana. Authority to establish these regulations is vested in the commission by R.S. 56:497(C).

**Title 76**

**WILDLIFE AND FISHERIES**

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

**Chapter 1. Freshwater Sports and Commercial Fishing**

**§137. Paddlefish**

A. The incidental take and possession of paddlefish (*Polyodon spathula*), commonly called spoonbill catfish, shall be regulated by the following provisions. Paddlefish as referred herein shall include roe and any parts thereof.

1. Properly licensed recreational fishermen using legal recreational gear may take paddlefish as per the following provisions. No person shall take or possess paddlefish in violation of any of the provisions herein.

a. Area—the taking or possession of paddlefish is closed in all saltwater areas of the state and in border waters shared with Texas.

b. All possessed paddlefish must be dead. The possession or transportation of live paddlefish is prohibited.

c. All paddlefish possessed on the waters of the state shall be maintained intact.

d. No person shall possess paddlefish eggs on the waters of the state which are not fully attached to the fish.

e. Daily Take and Possession Limit—the daily take and possession limit of paddlefish is two per person.

f. Maximum Size Limit—all paddlefish greater than 30 inches (lower jaw fork length) must be returned to the water immediately. Lower jaw fork length is the distance from the tip of the lower jaw to the mid-line of the caudal fin.

2. The commercial take and possession of paddlefish is prohibited. No person shall purchase, sell, barter, exchange or trade or attempt to purchase, sell, barter or trade paddlefish, their eggs or parts thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:325.C. and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 12:368 (June 1986), LR 15:868 (October 1989), amended by the Department of Wildlife and Fisheries, Office of Fisheries, LR 18:978 (September 1992), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 33:865 (May 2007).

Bryant O. Hammett, Jr.  
Secretary

0705#029

# Notices of Intent

## NOTICE OF INTENT

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

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

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Advisory Commission on Pesticides, proposes to amend an existing regulation 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 Rules implement further restrictions on the application of 2, 4-D, and products containing 2, 4-D.

This Rule complies with and is enabled by R.S. 3:3203.

#### Title 7

#### AGRICULTURE AND ANIMALS

#### Part XXIII. Pesticides

#### Chapter 1. Advisory Commission on Pesticides

#### Subchapter I. Regulations Governing Application of Pesticides

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

A. In addition to all other pesticides classified by EPA as restricted use pesticides, the pesticides listed in §143.B are classified as restricted use pesticides within the state of Louisiana, except:

1. when formulated in concentration of 2 percent or less; or
2. when formulated with fertilizer for use by homeowners; or
3. when formulated in containers of 1 quart or less or 2 pounds dry weight or less.

B. - O. ...

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

#### 1. Registration Requirements

a. 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 Louisiana Department of Agriculture and Forestry, Division of Pesticides and Environmental Programs ("DPEP") in writing.

b. 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 promulgated there under or to the pesticide label, deem it unsafe to make such applications. Growers found to be in violation of this Section may be subject to a stop order, subject to an appeal to the Advisory Commission on Pesticides.

#### 3. 2, 4-D or Products Containing 2, 4-D

##### a. Application Restriction

i. Aerial application of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually between April 3 and May 1 in the following parishes: Allen (East of U.S. Highway 165 and North of U.S. Highway 190), Avoyelles (West of LA Highway 1), Evangeline, Pointe Coupee (West of LA Highway 1 and North of U.S. Highway 190), Rapides, and St. Landry (North of U.S. Highway 190).

ii. Applications of 2, 4-D, or products containing 2, 4-D, shall not be made in any manner by any commercial or private applicators between May 1 and August 1 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 1 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, 4-D, or products containing 2, 4-D, a permit shall be obtained in writing from DPEP. 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 DPEP. Commercial ground and aerial applicators shall fax daily to DPEP all permitted or written authorized applications of 2, 4-D or products containing 2, 4-D. 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;
  - 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.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 19:1119 (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 27:1672 (October 2001), LR 33:

**Family Impact Statement**

The proposed amendments to Rules XXV.143 governing the use of the pesticide 2, 4-D and products containing 2, 4-D should not have any known or foreseeable impact on any family as defined by R.S. 49:972 D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

- 1. the stability of the family;
- 2. the authority and rights of parents regarding the education and supervision of their children;
- 3. the functioning of the family;
- 4. family earnings and family budget;
- 5. the behavior and personal responsibility of children;
- 6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons should submit written comments on the proposed rules to Bobby Simoneaux through the close of business on June 28, 2007, at 5825 Florida Blvd., Baton Rouge, LA 70806. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at the hearing. No preamble regarding this Rule is available.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Restriction on Application  
of Certain Pesticides**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no anticipated implementation costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no anticipated 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 estimated to be no costs or economic benefits to affected persons or non-governmental groups. Rules and regulations pertaining to restrictions on the application of 2, 4-D and products containing 2, 4-D are already in place. These rules simply amend these regulations to incorporate emergency rules which have been placed into effect on an annual basis.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is estimated to be no effect on competition and employment.

Skip Rhorer  
Assistant Commissioner  
0705#073

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Education  
Board of Regents**

Proprietary Schools (LAC 28:III.Chapters 1-21)

In accordance with the Administrative Procedure Act, R.S. 17:3141 et seq., notice is hereby given that the State Board of Regents for advertisement to repeal the old rules and adopt new rules and regulations to LAC 28, Part III, Proprietary Schools.

**Title 28  
EDUCATION**

**Part III. Proprietary Schools**

**Chapter 1. General Provisions**

**§101. Citation and Abbreviation**

A. These rules and regulations of the Board of Regents ("Board") govern the licensing and monitoring of proprietary schools operating in Louisiana upon the recommendation and advice of the Proprietary Schools Advisory Commission ("Commission").

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(D)(2) and (E).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

**§103. Definitions**

A. *Proprietary Schools*, hereinafter referred to as "school"—any business enterprise operated on a profit or on a nonprofit basis which maintains a place of business within

this state, or which sells or offers for sale any course of instruction in this state, either by correspondence using the mails or by any other means of communication, or by personal solicitation, at which place of business such course or course of instruction or study is available through classroom instruction, or both, to a person or persons for the purpose of training or preparing such person(s) for a field of endeavor in a business, trade, technical, or industrial occupation, except as hereinafter excluded. For purposes of this definition, a school that sells or offers for sale any course of instruction in this state through the internet or by correspondence is deemed a school only if it is also domiciled in the state or has a physical presence in the state. Physical presence shall include a mailing address in the state, a solicitor recruiting students in the state, or actual facilities in the state. The definition of a school shall not include:

1. a school or educational institution supported entirely or partly by public funds from either a local or state source. This provision only exempts from the board's regulation those schools that derive direct and significant support from public funds (such as through direct appropriation, and not schools that derive indirect benefit from public funds, such as through contractual payments from governmental agencies);

2. a parochial, denominational or eleemosynary school or institution that provides religious training or theological education; however, any such school or institution that also offers training in a secular field of endeavor shall be subject to the provisions of this Chapter;

3. a school or training program which offers instruction primarily in the field of recreation, health, entertainment or personal enrichment and which does not purport to prepare or qualify persons for employment as determined by the commission;

4. a course or courses of instruction or study sponsored by an employer exclusively for the training and preparation of its own employees when the employer is not primarily engaged in the business of selling or offering course of instruction or study. This includes those businesses that engage in contract training exclusively, and where admission/enrollment is not available to the general public;

5. a course or courses of study or instruction sponsored by a recognized trade, business or professional organization for the instruction of the members of such organization;

6. private colleges and universities which only award a baccalaureate or higher degree and which maintain and operate educational programs for which academic credits are given;

7. a private school which provides a basic academic education comparable to that provided in the public schools of the state;

8. a school offering a program only for children under six years of age;

9. a school which is otherwise regulated and licensed under the laws of this state;

10. a private tutor, teacher or individual engaged in giving private tutoring or lessons to five persons or less in non-school connected activities severed from the regular curriculum of a school as determined by the commission;

11. a day camp;

12. a training program that does not have attendance requirements in place for persons taking the courses and which offers for sale only non-sequential and non-continuous courses of one week duration or less which do not exceed 20 hours of training;

13. a manufacturer-certified training center that offers, at no additional charge to the person receiving training, manufacturer-authorized training that is included as part of the manufacturer's pricing package to prepare persons for certification conferred by the manufacturer and that uses course equipment and materials which are developed and sold by the manufacturer and course instructors and facilities which are certified by the manufacturer;

14. a school or business enterprise which offers instruction to prepare students for tests which are required for entry into a post secondary program of study; or

15. a business which engages in contract training and is reimbursed by the business.

B. *Branch School*—a separate facility established by a main school, under the main school's management, control and supervision. The branch may offer full student services and is under the supervision of a designated on-site employee responsible for the day-to-day operation of the branch. Each branch school shall be separately licensed and bonded.

C. *Commission Staff*—the staff of the board's Proprietary Schools Section, authorized to aid in the administration of the commission's functions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.2(5).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

### **§105. Proprietary Schools Law and the Administrative Procedure Act Incorporated**

A. R.S. 17:3141.1 et seq., inclusive, known as the Proprietary Schools Law, and R.S. 49:951 et seq., known as the Administrative Procedure Act, in their currently existing form and as may be amended, are hereby incorporated herein. All remedies and procedures available to the public under these laws, as they pertain to this commission, are hereby made available herein as rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.1, R.S. 49:954.1(A), R.S. 17:3141.3(E).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

### **§107. Computation of Time**

A. In computing a period of time allowed or prescribed by these rules, by law or by order of the commission or of court, the date of the act, event, or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday or a day of the weekend, in which event the period runs until the end of the next day, which is not a legal holiday or a day of the weekend.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), La. C.C.P. art. 5059.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

## **Chapter 3. Procedures**

### **Subchapter A. General Procedural Rules**

#### **§301. Initiation of Proceedings**

A. Proceedings. Proceedings for the adoption, amendment, or repeal of a rule may be commenced by the

board or commission upon its own initiative or pursuant to reasonable grounds therefore. The commission however, shall initiate procedures to adopt, amend or repeal a rule whenever the attorney general requests same.

B. Process for Initiation. Any interested person may petition the commission requesting the adoption, amendment, or repeal of a rule. The petition shall be filed in the office of the commission located at the Claiborne Building, the Louisiana Board of Regents, Proprietary Schools Section, 1201 N. Third St., Suite 6-200, Baton Rouge, LA, 70802 or P.O. Box 3677, Baton Rouge, LA 70821, or such other address in the event the commission relocates, at any time during normal office hours, from 8 a.m. to 4:30 pm, except for legal holidays and the weekend. Within 90 days after submission of a petition, the commission shall either deny the petition in writing stating reasons for the denial, or shall initiate rule-making proceedings in accordance with these rules. Any person whose petition is not deemed by the commission sufficient to warrant the holding of a rule-making proceeding will be promptly notified of that determination and may be given an opportunity to submit additional data.

C. Investigations and Conferences. In connection with any rule-making proceedings, the commission at any time may conduct such investigations, make such studies, and hold such conferences as it may deem necessary.

D. Notice. Prior to the adoption, amendment, or repeal of any rule, the commission shall give notice of its intended action in accordance with R.S. 49:953(A)(1). The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made a timely request of the agency for advance notice of its rule-making proceedings and shall be published at least once in the official state journal.

E. Opportunity to be Heard. Prior to the adoption, amendment, or repeal of any rule, the commission shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing, in accordance with R.S. 49:953(A)(2).

F. Emergency Rules. If the commission finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than that provided above, it may proceed to adopt emergency rules in accordance with R.S. 49:953(B). The Emergency Rule thus adopted may be effective for a period not to exceed 60 days, but the adoption of an identical rule otherwise under these rules is not precluded.

G. Filing, Publication and Effective Date of Rule. The commission shall file with the Office of State Register a certified copy of any rule or regulation adopted upon the completion of a rule-making proceeding and publish the same in the official state journal in accordance with R.S. 49:954. Such rules or regulations shall become effective pursuant to R.S. 49:954(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953, R.S. 49:954.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

## **Subchapter B. Pleadings**

### **§303. Petition to Adopt, Amend or Repeal a Rule**

#### **A. Petition to Adopt, Amend, or Repeal a Rule—**

1. a petition to adopt, amend, or repeal a rule shall be typed or printed on either standard letter size bond paper or on standard legal size bond paper;

2. the petition shall be dated and shall contain the following:

a. the title of the pleading (i.e., "petition");

b. the names of the petitioners;

c. the names of representatives and legal counselors of such petitioners (if applicable);

d. all pertinent allegations of fact, data, views, arguments and reasons supporting the action sought by the petition;

e. a statement or prayer expressing the exact action sought by the petition; and

f. the signatures of all petitioners, if individual, natural persons, or the signatures of duly qualified representatives of petitioner, if a governmental agency or subdivision or an association of persons;

3. the petition, in setting forth all pertinent allegations of fact, data, views, arguments, and reasons supporting the action sought by the petition, shall contain separate, numbered paragraphs, one for each fact, data, view, argument, and reason set forth;

4. the petition, in expressing the exact action sought by it, shall cite and quote the rule to be adopted, amended, or repealed; and if a rule is sought to be amended, the petition shall quote the rule as it would read after amendment, if it were in fact amended; and

5. only substantial compliance is necessary to meet the requirements of form, and to that end, the provisions of this section shall be liberally construed in favor of accepting the petition.

B. Other Pleadings. Pleadings of any type may be submitted to the commission. They shall be similar in form to that of petitions, except that they may exclude those things peculiar to petitions and shall include those things to which they pertain.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

## **Subchapter C. Citation and Production of Evidence for Rule-Making Procedures**

### **§305. Voluntary Submission of Evidence**

A. Any interested person may voluntarily submit evidence, testimonial or real, to the commission, such evidence being relevant and material to any issue involved in the adoption, amendment or repeal of any rule, to the corroboration of or to the unreliability or inaccuracy of any witness or other source of evidence submitted, or to the credibility or non-credibility of any witness or other source of evidence submitted, in the same form and manner as otherwise provided herein or by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:



## **Subchapter D. Public Hearings**

### **§307. Adjudication**

A. Process. In any matter defined as adjudication in R.S. 49:951(1), notice shall be given, hearings held and a decision or order issued, all in accordance with the procedures provided for adjudications in R.S. 49:955-961. Upon the conclusion of the hearing and consideration of all evidence presented, the commission shall submit a recommended decision or order to the board for board approval.

B. Rules of evidence:

1. the commission may admit and give probative effect to evidence which possesses probative value and which is commonly accepted by reasonably prudent men in the conduct of their affairs. It shall give effect to the rules of privilege recognized by law. It shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

2. all evidence, including records and documents in the possession of the commission of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by all interested persons before being received in evidence; and

3. notice may be taken of judicially recognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the commission's specialized knowledge. All persons who have shown an interest therein shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The commission's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

C. Admission of Depositions. The presiding officer or any person interested in a proceeding before the commission may take the depositions of witnesses, within or without the state, in the same manner clothed with all the formalities as provided by law for the taking of depositions. Depositions so taken shall be admissible in any proceeding affected by this Chapter. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by the presiding officer in accordance with the rules of evidence provided in this Chapter above.

D. Reopening Hearing and Rehearings. The commission may reopen any hearing for good cause shown, and may grant a rehearing in accordance with R.S. 49:959.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:955, R.S. 49:956, R.S. 49:959.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

## **Subchapter E. Declaratory Orders and Rulings**

### **§309. Declaratory Orders and Rulings**

A. The commission shall consider petitions for a declaratory order or ruling as to the applicability of any statutory provision or of any rule or order of the board, submitted pursuant to R.S. 49:962, hold hearings if necessary, and submit a recommended declaratory order or ruling. A petition for a declaratory order or ruling shall contain:

1. the title of the pleading (e.g., "Petition for Declaratory Order");
2. the names of the petitioners;
3. the names of representatives and legal counselors of such petitioners (if applicable);
4. a concise statement of the issue posed, along with citations to the statute, rule or order at issue;
5. a clearly organized statement of all pertinent allegations of fact and data, and if the petitioner takes a specific position on the issue, the arguments and reasons supporting such position;
6. a statement or prayer expressing the exact action sought by the petition;
7. the signatures of all petitioners, if individual, natural persons, or the signatures of duly qualified representatives of petitioner, if a governmental agency or subdivision or an association of persons; and
8. only substantial compliance is necessary to meet the requirements of form, and to that end, the provisions of this section shall be liberally construed in favor of accepting the petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:962.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

## **Chapter 5. License Requirements**

### **§501. Applications**

A. General

1. All applications must comply with the provisions of R.S. 17:3141.4, as well as any applicable provisions of these regulations. All applications concerning licenses are to be submitted to the commission at the following address or such other address in the event the commission relocates:

Louisiana Board of Regents  
Proprietary Schools Section  
Post Office Box 3677  
Baton Rouge, LA 70821-3677

2. All applicable fees, as provided below, must be by company, institutional, certified check, or by money order and must be made payable to the "Louisiana Board of Regent", with the exception of the Student Protection Fund which is to be made payable to the "Student Protection Fund." Except for overpayments toward the Student Protection Fund, no portion of any license fee shall be subject to refund.

B. Initial Application and License Fee. The initial license application fee shall be \$2,000. A payment of \$1,000 toward the student protection fund must be paid along with the license fee.

C. Renewal Application and Fee

1. The annual renewal application fee is based on the school's gross tuition revenues for the previous year as follows.

Under \$50,000	\$500
\$50,000 and up	Greater of \$1,000 or 0.25% of gross tuition income

2. If a complete license renewal application is not received at least 30 days prior to its expiration date, in addition to the renewal fee, there shall be a delinquent fee of \$500. In addition to the renewal application fee and any delinquent fee, a payment to the Student Protection Fund, if applicable, must be made in accordance with R.S. 17:3141.16.

D. License Fee for Solicitors. The annual license fee for each solicitor/sales representative of a school shall be \$100.

E. Reinstatement Licensure Fee. The reinstatement licensure fee for a suspended school shall be \$500.

F. Change of Ownership Application and License Fee. All changes of ownership are contingent upon approval from the board. Applications for a new license must be requested within 10 days of the change of ownership. No license shall be transferable. The application fee is \$2,000. A payment of \$1,000 toward the student protection fund must be made along with the application fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.4, R.S. 17:3141.9(A)(1).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

**§503. Student Protection Fund**

A. First Payment. Initial (new) schools and change-of-ownership schools shall be required to submit their first payment of \$1,000 made payable to the "Student Protection Fund" with their application.

B. Annual Payment. The required annual payments, if applicable, to the Student Protection Fund shall be collected based on the schedule provided in R.S. 17:3141.16.

C. Collection Schedule. Annual payments shall cease when the fund accumulates to \$800,000 but shall resume when the fund drops below \$750,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.16.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

**§505. Affidavits**

A. Applications and renewal applications must be accompanied by affidavits (PSC-9 Form) by each owner, director, instructor, and all office and clerical personnel, unless previously approved, and Solicitor Permit Applications (PSC-4 Form) by each solicitor containing the information prescribed by Subsection C(11) or R.S. 17:3141.1 (for solicitor renewal, see Section 703). In the case of office and clerical personnel, in lieu of the affidavits of such personnel, the owner may submit an affidavit setting forth the information prescribed by Subsection C(11) of R.S. 17:3141.4 concerning such personnel. Such information shall be based on the owner's investigation and knowledge. For solicitor renewal, see Section 703.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.4(D).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

**§507. Surety Bond**

A. Each license application must be accompanied by a surety bond in the amount of \$10,000 issued by a surety authorized to do business in Louisiana. The bond must meet the requirements set forth in R.S. 17:3141.5 and the PSC-3 Form. Bond releases and terminations shall be as provided in R.S. 17:3141.5(D) and (E), and suspension of operating license for lack of surety bond coverage is governed by R.S.17:3141.5(F). A school may be exempted from filing a surety bond if it meets all of the following requirements:

1. does not require students to pay tuition for course of study more than one month in advance;

2. has been in continuous operation for at least five years; and

3. has met all the requirements of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.5(D), R.S. 17:3141.5(E).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

**§509. Other Provisions Concerning License**

A. A license shall be valid only for the school and shall not include other schools or branches operated by the owner. Each separate location or branch school shall be licensed and bonded. No new courses shall be offered by any school holding a license until it is approved by the commission staff in accordance with procedures to be established by the commission.

B. Each license must be displayed on the premises. No license shall be transferable. In the event of a change of ownership of the school, the license shall be revoked unless the new owner, within 10 days after the change of ownership, requests an application for a license to operate the school.

C. Any person who contemplates the purchase of a school may apply for a license. If the board grants such a license, it shall become a valid license only upon completion of the proposed sale.

D. All licenses shall be renewed annually, not less than 30 days prior to expiration date thereof. Updated information must contain all changes in staff, school programs, etc., including all additions and deletions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.5(B)(C).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

**§511. Denial of Recommendation of License and Commission Hearing**

A. If the commission or commissioner recommends the denial of a license, the commission shall hold a hearing upon the applicant's request, as provided in R.S. 17:3141.6. The applicant may appear in person or by counsel and may present evidence in support of granting the license. The decision or order resulting from a hearing before the commission is subject to rehearing, reopening, or reconsideration by the commission within 10 days from the date of its entry on the grounds set forth in R.S.49:959 and in accordance with the procedures therein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.6.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

**§513. Revocation of License**

A. Licenses may be revoked by the board in accordance with the standards and procedures set forth in R.S.17:3141.8 and statutory and regulatory provisions applicable thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.8.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

**Chapter 7. Personnel Affidavits/Permits**

**§701. Completion of Affidavits by Non-Instructional Personnel/Instructional Personnel**

A. Completion of Affidavit by Non-Instructional Personnel

1. An affidavit (PSC-9 Form) containing the following information must be submitted by the owner of each school (if a corporation, by each officer and by each director) and by each staff person, except solicitors:

- a. full name and address of said person and the capacity in which he/she serves the school;
- b. the city, parish/county, and state of said person's permanent residence and places of residence for the past five years;
- c. the names and addresses of said person's employer or employers for the past five years;
- d. whether or not said person has ever been convicted of a felony for a crime involving fraud or any misdemeanor other than a traffic violation; and
- e. three persons who may be contacted concerning such person's good moral character.

2. In the case of office and clerical personnel, in lieu of affidavits by the office and clerical personnel, the owner may submit the information in the form of an affidavit by the owner, based on the owner's investigation and knowledge. (Refer to §505.)

B. Completion of Affidavit by Instructional Personnel

1. An affidavit (PSC-9 Form) containing the following information must be submitted by each person who will be serving as an instructor at the school:

- a. full name and address of said person and the capacity in which he/she serves the school;
- b. the names and addresses of said person's employer or employers for the past five years; and
- c. three persons who may be contacted concerning such person's good moral character.

2. Minimum qualifications of an instructor include the following:

- a. an instructor in an academically-credentialed area shall have a baccalaureate degree from a bonafide, accredited college or university, and demonstrate appropriate familiarity with the subject matter taught as evidenced by an academic transcript and/or occupational experience;
- b. an instructor, in other than an academically-credentialed area, shall have a high school diploma or its equivalent; a license, diploma, certificate, or other degree from a recognized institution or organization in the area taught; and four years of documented occupational experience in the area taught;
- c. as used in this Subsection, a "recognized institution or organization" shall mean any bonafide, licensed, chartered or traditionally accredited business or association legally engaged in commerce, education, training, or advocacy. Recognized institutions or organizations shall include, but not be limited to,

governmental agencies, labor unions, trade and professional corporations, and retail, financial, and commercial entities. The commission shall reserve the right to use all reasonable means in verifying the validity of credentials;

d. at the board's discretion, the minimum four years experience required for instructors may be waived for those disciplines where teaching credentials are officially certified, licensed, or otherwise approved or granted by a federal agency; and

e. employees employed prior to May 30, 1989 will be exempted from occupational experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.8.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

**§703. Solicitor Application, Bonds, Renewal, Denial, and Revocation**

All forms are prepared and provided by the Commission Staff.

A. Permits and Applications. No person shall sell any course of instruction or solicit students therefore in Louisiana for any school unless he has obtained a solicitor's permit from the commission. A separate permit is required for each school the solicitor represents. A separate application (PSC-4 Form) with required fee and bond must be submitted for each permit sought (i.e., for each school to be represented).

Louisiana Board of Regents  
Proprietary Schools Section  
Post Office Box 3677  
Baton Rouge, LA 70821-3677

B. Bonds. Surety bonds for permits must be in the amount of \$1,000 for each permit issued. The bond must be continuous and must be issued by a solvent surety authorized to do business in Louisiana (see PSC-5 Form). The bond may be supplied as a blanket bond by a school covering each agent, \$1,000 in amount for each agent. This bond is set forth in PSC-6 Form. If a surety cancels a bond (as provided in R.S. 17:3141.9B) then a substitute bond (meeting all conditions for the original) must be furnished and the solicitor's permit shall be in a state of suspension for any period of time not covered by a proper bond.

C. Renewals. Each permit is valid for one year from date of issuance unless revoked and must be renewed not less than 30 days prior to expiration date. At the time of renewal, the owner/director must submit a PSC-4 Form, (unless the owner/director submits written notification of continued employment of solicitor); a \$100 renewal fee (made payable to the "Louisiana Board of Regents"); and proof of continuous bond coverage.

D. Denial of Permits. The commission may deny recommendations of issuance of a permit when proper grounds exist therefore. The procedures in such cases shall be in accordance with the applicable provision of R.S. 17:3141.1-3141.14 and R.S. 49:951-966.

E. Revocation of Permits. A permit may be revoked for any of the causes set forth in R.S. 17:3141.11. Notice of contemplated revocation must be given in writing at least 30 days prior to the effective date of revocation. At any time within 30 days prior to the revocation, upon request of the solicitor, the commission shall afford the solicitor an opportunity to be heard in person or by counsel. On or before 30 days prior to the date set for hearing, the commission shall notify the aggrieved solicitor of the date

and purpose of the hearing and the grounds for the contemplated revocation of the permit. The procedure for revocation shall be in accordance with those prescribed by R.S. 49:951-966 and by R.S.17:3141.1-14 as applicable to such action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.8, R.S. 17:3141.9.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

## **Chapter 9. Proprietary Schools Applications**

### **§901. Initial License or Change of Ownership**

A. Please refer to the PSC-14 Form, Proprietary Schools License Requirements Checklist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.4, R.S. 17:3141.5.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

### **§903. License Renewal**

A. Renewal letters are mailed to the school owners annually. A license renewal application must be received in this office 30 days prior to the license expiration. If it is not, there shall be a \$500 delinquent fee. Failure to furnish all the renewal information prior to the license expiration date will cause the license to expire. There can be no exceptions or any other extension. The following paperwork must be submitted:

1. a completed PSC-1 Form;
2. the original verification from the bonding company that the surety bonds (\$10,000 for school and \$1,000 per solicitor) are still in effect must accompany the renewal application. The premium period must coincide with the school's licensure period. For example, August 26, 2006-August 26, 2007;
3. a completed PSC-12 form;
4. the renewal fee based upon the school's previous year's gross tuition revenues. The check is to be made payable to the "Louisiana Board of Regents." Refer to the PSC-12 form;
5. financial statements:
  - a. for those schools which participate in Title IV funding, an original set of financial statements that have been audited by an independent Certified Public Accountant licensed in the state of Louisiana, including a current balance sheet and an income statement showing gross tuition receipts for the school's last fiscal year, and in the case of a corporation, signed by an officer of the corporation, sole proprietorship or partnership, signed by the owner(s) or a duly authorized agent acting on behalf of the owner(s), stating that it is true and correct; and
  - b. for those schools which do not participate in Title IV funding, an original set of financial statements that have been reviewed by a Independent Public Accountant licensed in the state of Louisiana, including a current balance sheet and an income statement showing gross tuition receipts for the school's last fiscal year, and in the case of a corporation or sole proprietorship or partnership, signed by the owner(s) or a duly authorized agent acting on behalf of the owner(s) stating that it is true and correct;
6. an internal compilation reflecting the school's most recent quarter, if the audit/review submitted with the renewal materials, reflects a business year that ended more than 120 days prior to the submission of the renewal materials;

7. a completed PSC-18 Form reflecting the application date listed on the PSC-1 Form;

8. a completed PSC-4 Form for any new solicitor employed with the school. The initial and/or renewal fee is \$100 per solicitor is to be made payable to the "Louisiana Board of Regents;"

9. a completed PSC-9 Form on all instructors and staff employed since the last school renewal, unless previously approved during the year;

10. a current school catalog;

11. a current copy of the Enrollment Agreement/Enrollment Contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.4, R.S. 17:3141.5.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

### **§905. Associate in Occupational Studies (AOS) Degree Application**

A. Requirements. An eligible post-secondary school may award a non-academic degree entitled "The Associate in Occupational Studies."

1. The school must be licensed by the board, domiciled in the state of Louisiana, and accredited by a regional or national accrediting agency recognized by the United States Department of Education.

B. The board shall revoke the degree-granting status of any post-secondary school that loses or withdraws its accreditation.

C. No school shall be licensed to award the Associate of Arts or Associate of Science. All advertising, recruiting, and publications shall state clearly that such occupational degree awarded by a post-secondary school is non-academic and does not imply, promise, or guarantee transferability.

D. Each student admitted to an occupational degree program in an accredited post-secondary school shall be required to:

1. have a high school diploma or equivalent; and
2. complete a minimum of two years, four semesters, or six quarters of course work for each occupational degree program.

E. Each AOS degree program shall have a minimum of 75 percent of its course of study in a specific occupational area.

F. Each course of study shall have a minimum of 96 quarter hours if using quarter hours, a minimum of 1800 clock hours if using clock hours, and a minimum of 64 semester hours if using semester hours.

G. Application Enclosures. Enclose one original and eight copies, in binders with tabs, of the following:

1. a completed PSC-1 Form, including the title of the proposed AOS degree program;
2. the completed PSC-11 Form;
3. a blank copy of the diploma that would be awarded upon successful completion of the AOS degree program;
4. a detailed program outline including subject numbers, subject titles, clock hours, quarter hours or semester hours (whichever is used for each subject), and total clock hours, quarter hours, or semester hours (whichever is used for each program);
5. a description of each subject listed on the outline; and

6. an inventory list of equipment/supplies/furnishings available for the AOS degree program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.15.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

#### **Chapter 11. Student Protection Fund**

##### **§1101. Policies and Procedures**

###### **A. Student Protection Fund Policy**

1. The Student Protection Fund is administered by the board and the commission; shall be subjected to audit and review by the legislative auditor's office.

2. Required refunds due from the Student Protection Fund will be provided on a pro rata basis, or other means as appropriate. Prior to any funds being released from the Student Protection Funds, the school's surety bond must be exhausted.

3. For students that have loans, the administrator of the Student Protection Fund will enter into an agreement with the state guaranty agency that any refunds will be allocated as follows:

a. present holder of the loan, whether lender or LOSFA, and any remaining balance to the borrower;

b. for students without loans, appropriate tuition repayment.

4. Administration of the Student Protection Fund is subject to review by the U.S. Department of Education and the state guaranty agency:

a. the commission staff shall retain all records pertaining to the determination of payment or denial of refunds for a period of not less than one year after the final determination has been made;

b. records shall be maintained in an organized manner; and

c. records shall be readily accessible to the U.S. Department of Education and guaranty agency auditors.

###### **B. Student protection fund procedures:**

1. the application for tuition recovery (PSC-15 Form), may be submitted after reasonable efforts to compensate the student from the following resources have been exhausted (see PSC-15 Form for instructions):

a. provide teach-out;

b. acquire refund from the school;

c. acquire refund from any other school resources;

and

d. acquire refund from U.S. Department of Education, Closed School Section;

2. lenders holding loans eligible for refunds under the Student Protection Fund may submit the claims to the commission without undertaking any additional collection activity, if the commission determines that the student has not submitted a claim. Submission of a claim by the lender will preclude the student from filing a claim at a later time;

3. refund calculations will be based upon copies of enrollment contracts, student ledger cards, and other pertinent documents submitted by the student; and

4. students and/or lenders applying for relief to the Student Protection Fund will be notified of the status of the request within 60 days of receipt of the application by the commission staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.16.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

#### **Chapter 13. Advertising Rules for Proprietary Schools**

##### **§1301. Advertising Rules**

A. Advertising. All advertising shall forthrightly disclose the purpose of the advertising, that education or training, not a job, is offered, and that the advertiser is a school. Advertising includes any form of public notice however disseminated or utilized. Within this definition would be all publications, communications, promotional items, and efforts which could normally be expected to be seen or encountered by significant numbers of prospective students or their sponsors. Examples include catalogs and other school publications, signs, mailing pieces, radio, television, audio-visual, newspaper, internet or any other form of public notice resulting from the school's recruiting and promotional activities.

B. Solicitation. In the solicitation of students, a school shall not directly, or by implication, misrepresent the services it renders. All advertisements and promotional literature used shall be truthful, informative and constructive; and avoid conveying any false, misleading or exaggerated impressions with respect to the school, its personnel, its courses and services, or the occupational opportunities for its graduates. The true purpose and nature of a school's offerings shall be evident in all advertising. Every advertisement shall constitute to the reader a clear statement of a bonafide offer or announcement made in good faith. It shall be written to its anticipated readership, normally persons unsophisticated in the traditional word usage of the education industry. Therefore, all solicitation must be truthful and conducted with extreme care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.13, R.S. 17:3141.5(A)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

#### **Chapter 15. Violations**

##### **§1501. Authority, Investigation, And Sanctions**

A. Violations. The following is an illustrative, but not exclusive, list of actions constituting a violation:

1. failure to provide the commission with an item of information required by R.S. 17:3141.1 et seq.;

2. misrepresentation about a school's credentials or accreditation;

3. a false claim or guaranty of employment by a school or solicitor;

4. failure to disclose to a student a necessary requirement for employment;

5. false or misleading advertising;

6. unethical behavior by a solicitor;

7. failure to disclose liability for repayment of a student loan;

8. failure to respond to student complaints as provided in the student complaint rule, R.S. 17:3141.3(D)(2)(b) and 17:3131.3(E);

9. employment of an instructor who is unqualified;

10. unsafe or unhealthy condition of a school;

11. unsafe, unhealthy, or inadequate instructional equipment;

12. failure to teach the number of hours claimed;

13. failure to maintain attendance records and to provide them for inspection;

14. failure to comply with a contractual relationship with a student;
15. failure to release the grades of a student;
16. failure to cooperate with an investigator from the commission;
17. attempting to obtain, obtaining, or renewing a license to operate a school by fraudulent misrepresentation or bribery;
18. placement of classified advertisement under "employment" or other similar categories related to employment rather than "education" or "instruction;"
19. upon closure, failure to transfer student records to the board; and
20. failure to comply with the provision of R.S. 17:3141.1 et seq., or any written rule or regulation of the board.

B. Authority and Scope. The definition of "school" for the purpose of this rule shall include a licensed school and school owners, employees, operators, agents and solicitors. The commission shall use the following procedures prior to making a recommendation to the board under R.S. 17:3141.8(A) that a school license should be revoked, canceled, or suspended.

1. Any school found to be in violation of any provision of R.S. 17:3141 et seq., or any other state regulation adopted by the commission pursuant to the Administrative Procedure Act governing the administration or operation of a school may be sanctioned by one or more of the following remedies:

- a. restitution and remedial measures;
- b. civil money penalties (fines); and
- c. revocation, suspension, cancellation, or other restrictions on the license.

2. The commission's assessment of a sanction shall be based on the following considerations:

- a. whether the violation or substantially similar violation has previously occurred;
- b. the duration of the violation;
- c. the severity of the violation;
- d. the school's history of compliance with the regulations;
- e. what sanction is most likely to bring the school into compliance in the shortest time;
- f. the "good faith" exercised by the school in attempting to stay in compliance with the regulations; and
- g. such other factors as the commission deems appropriate.

#### C. Investigation

1. When the commission's staff becomes aware of a violation, it may conduct an onsite investigation of a school. The inspection may or may not be announced at the discretion of the staff.

2. The agent conducting the investigation shall have the authority to:

- a. privately interview administrators, teachers, solicitors, and students;
- b. inspect school records, documents, catalogs, forms, and advertisements; and
- c. inspect the school facilities and equipment.

3. The school shall cooperate fully with the agent.

4. Within five days of the investigation the agent shall prepare a written report which shall be furnished to the commission staff and the school. The report shall contain:

- a. factual findings relevant to the initial violation;
- b. factual findings of any additional violations;
- c. recommendations of remedial measures to be taken by the school; and
- d. recommendations of any sanctions to be taken by the commission including the commission's petition for an injunction to terminate the violation;
- e. the procedure by which an administrative hearing may be requested.

5. Additional or follow-up visits may be made to the school to monitor violations or to monitor remedial measures taken to correct prior violations.

#### D. Notice of a Violation

1. When a violation of state statutes or regulations governing the administration or operation of a school has occurred, in accordance with R.S. 17:3141.8, the commission staff shall give notice of the violation to the school's director by certified mail, return receipt, and shall afford the school an opportunity to be heard in person or by counsel.

2. The written notice of the violation shall:

- a. specify the violation(s);
- b. cite the legal authority which establishes the violation(s);
- c. cite any sanctions assessed for each violation;
- d. inform the school's director that the determination of the violation and imposition of the sanction are final, and no further administrative or judicial appeals may be had if a timely appeal is not filed; and
- e. inform the school's director if the violation is regarded as a repeat or continuing violation and the manner in which the sanction will be imposed.

3. If the school requests a hearing, the commission staff shall hold a hearing and take evidence. Strict rules of evidence shall not apply. A tape recording of the hearing shall be made. The school may deny the violation, admit the violation in part and deny it in part, or admit the violation but request a reduction or modification of the sanction imposed. The school may present witnesses or documentary evidence in its defense bearing directly on the violation asserted. The school is limited to one witness to attest to its reputation or to remedial measures it has taken. The commission may consider reputation and remedial measures in mitigation of the sanction. For continued or repeat violations, reputation or remedial measures shall not be considered.

4. The commission staff shall have authority to determine for purposes of making a recommendation to the board, whether a violation is a repeat or continuing violation:

- a. a repeat violation is the recurrence of the same or a substantially similar violation within a period of 12 months;
- b. a continuing violation is one that may be reasonably expected to continue until corrective action is taken. A continuing violation may be considered as a repeat violation for each day following the day on which the initial

violation is established, until such time as there is evidence establishing a date by which the violation is corrected. A continuing violation may be subject to appropriate sanctions for repeat violations up to the number of days of the violation at the discretion of the commission staff.

5. After holding a hearing, the commission shall submit its findings to the board, and may recommend any of the penalties listed in Paragraph 1501.B.1 and Subsection 1501.F, as it deems appropriate. The commission shall also forward a copy of its findings and recommendation to the school, notify the school of the date of the board meeting when the commission's recommendation will be considered, and advise the school of the opportunity to appear at the board's meeting by person or by counsel and be heard. After due consideration of the commission's recommendation and the school's arguments (if the school presents any arguments) and upon a vote of two-thirds of the authorized membership of the board, the board may revoke, cancel, suspend or restrict the school's license, or impose fines or refunds.

6. A sanction which requires monetary payments, either fines or restitution, shall be paid within a timeframe as determined by the board following its notification.

#### E. Description of Sanctions

1. Restitution and Remedial Measures. The commission may impose sanctions consisting of, but not limited to, the following measures:

- a. rebate of all or a portion of the tuition to the students;
- b. modification or termination of advertising when unwarranted, false, or misleading claims are made, or placement of corrective ads;
- c. counseling of students when they have been misinformed about a material matter;
- d. the posting of a sign in a prominent position in a school correcting a false representation made to the students;
- e. the distribution of an informational leaflet to the students informing them of their rights;
- f. the inclusion or exclusion of information from the student catalog to correct a misrepresentation;
- g. repairs or modification to a physical facility when health or safety is jeopardized;
- h. repairs or modification to equipment when health or safety or delivery of quality instruction is jeopardized;
- i. an order to terminate a gross violation of the statutes or regulations;
- j. an order to cease the enrollment of new students or to limit enrollment to those students who meet more restrictive admission standards; and
- k. modification of the curricula or methods of instruction.

2. Civil Money Penalties (Fines). The commission has the authority to impose a fine up to \$500 for each violation. Repeat or continuing violations may be assessed separate fines up to \$500 for each day of violation. After a fine is imposed, the commission may allow a specified period of time for the correction of the violation. If the violation is corrected, the commission may waive the payment of the fine. The school may be given the opportunity to demonstrate compliance before the fine becomes final. A violation for which a fine is waived shall still be counted for repeat and continued violations. The right to assess civil

fines is not merged in other remedies, and the commission may impose other sanctions in addition to the fines.

3. Revocation of License. The commission may recommend the revocation of a school's license to the board.

F. Appeal Procedure. Any sanction may be administratively appealed as long as the appeal is timely filed in accordance with R.S. 17:3141.8(F).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(D)(2), R.S. 17:3141.8, R.S. 17:3141.14, R.S. 17:3141.18.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

### **Chapter 17. Student Complaint Procedure**

#### **§1701. Policies, Conciliation, Conference, Hearing, and Review**

##### A. General Policies

1. The purpose of this complaint procedure is to provide an effective and efficient method by which students may resolve their complaints with the commission staff under the jurisdiction of the board;

2. The commission staff shall prepare and provide a copy of the complaint procedure to each licensed school; and

3. Each school shall include in either their catalog or enrollment agreement the following:

a. Complaints relative to actions of school officials may be made and must be in writing, addressed to the Louisiana Board of Regents, Proprietary Schools Section, P.O. Box 3677, Baton Rouge, LA 70821-3677, 225/342-4253. Such complaints may be made only after the student has unsuccessfully attempted to resolve the matter with the school by having first filed a written and signed complaint with that school's officials. Any student who wishes to review the student complaint procedure may make a request for a copy of the procedure, in writing, addressed to the Louisiana Board of Regents, Proprietary Schools Section, P.O. Box 3677, Baton Rouge, LA 70821-3677, (225)342-4253.

##### B. Conciliation—

1. any student who believes he/she has been aggrieved by actions of school officials shall complain in writing to the commission staff at Louisiana Board of Regents, Proprietary Schools Section, Post Office Box 3677, Baton Rouge, LA 70821-3677, 225/342-4253, only after having first filed a written and signed complaint with the school officials;

2. if the complaint is not resolved, the student may submit a written request for assistance to resolve the matter with the school after having first filed a written and signed complaint with that school's officials;

3. copies of this initial notice of the complaint will be sent to the school and to the complainant. A copy must also be retained in the commission staff files;

4. the notice of complaint will request that the student and the school meet and discuss the complaint in a conciliation effort and/or communicate in writing within 10 days after receipt of the notice;

5. if after 10 days, the complaint has not been satisfactorily resolved, the student may request further assistance from the commission staff; and

6. the commission staff may, at its discretion, eliminate the conciliation procedure where a student has already contacted the school regarding the problem and may proceed directly to the mediation conference.

##### C. Mediation Conference

1. If the student advises the Section that no satisfactory resolution has been achieved with the school through the conciliation procedure, at that point the commission staff may forward the complaint and all associated materials to the Louisiana Division of Administrative Law.

2. If no amicable resolution is achieved in the mediation process, either party may request, within seven days, a hearing before the commission. Within five working days following a request for a hearing, the commission staff shall send written notice to the parties containing the following:

- a. an explanation of the hearing procedures; and
- b. the date, time and place for the hearing.

D. Hearing:

1. a public hearing shall be held before the commission. The parties shall be given 15 days notice in advance of the hearing, including the time, place and nature of the hearing and a statement of the alleged complaints to be the subject of the hearing;

2. the hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act; and

3. the commission shall prepare a report of its findings and recommendations and submit it to the board. The board shall render a decision accompanied by written reasons within 30 days following the conclusion of the hearing. This decision will be transmitted to all parties with a notice of the right to judicial review.

E. Judicial Review. Either party may appeal to the Nineteenth Judicial District in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.3(D)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

## **Chapter 19. Student Records**

### **§1901. General Policies**

A. All schools shall maintain all student records as required under R.S. 17:3141.16(D)(3). All student records shall include, but are not limited to enrollment agreements, attendance records, financial and academic transcripts, and exit interview.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.16(D)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

### **§1903. Transfer of Student Records**

A. A school must make arrangements to transfer all student records to the Commissioner of Higher Education at the commission's address within 10 days of closing. If any of the records have been seized or confiscated by legal authorities, the board shall request the authorities for documentation regarding seizure of the records. However, the school remains responsible for turning over unseized records. Any closed school, that maintains student files and electronic files shall make arrangements to electronically transfer such records to the board. The records shall be prepared in the following manner:

1. they shall be filed in alphabetical order;

2. each container will be clearly marked "official records" and will show the alphabetical order within the container (e.g., aa to bc); and

3. the containers shall be sealed to prevent loss or damage and marked in succession.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.16(D)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

### **§1905. Penalties**

A. Failure to maintain and/or turn over student records as provided above will result in the assessment of penalties.

B. If necessary, a claim shall be made against the surety bond posted at the time of submission of the license application to satisfy any penalties for failure to maintain and/or turn over student records pursuant to R.S. 17:3141.5(D)(1)(b)(iv).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.16(D)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

## **Chapter 21. Exceptions**

### **§2101. Board Authority**

A. The board retains the authority to waive or make exceptions to any provision of these regulations if it deems such waiver or exception to be in the public interest. This authority shall be exercised by majority vote of the Louisiana Board of Regents pursuant to request by a school, any interested party, recommendation of the commission, or upon its own motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.3(D)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

### **Family Impact Statement**

### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested Parties may submit written comments until 4:30 p.m. June 10, 2007, to Larry Tremblay, Board of Regents, P.O. Box 3677, Baton Rouge, LA 70821-3677.

Larry Tremblay  
Deputy Commissioner



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Proprietary Schools**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no estimated implementation costs or savings to state or local governmental units as a result of these changes. The rule changes reflect a complete rewrite and update of the rules to reflect current BOR policy and procedures. There is no fiscal impact because the changes are technical in nature and do not fundamentally alter the regulation of proprietary schools in Louisiana.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This rule update has no effect on revenue collections of state or local governmental units. The rule update included no changes to fees, fines, or other charges.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This rule update has no costs and/or economic benefits to directly affected persons or non-governmental groups. The rule update included no changes to fees, fines, or other charges.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no effect on competition and employment.

Larry Tremblay  
Deputy Commissioner  
0705#061

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Scholarship/Grant Programs—Eligibility  
(LAC 28:IV.505, 507, and 703)**

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant Rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1).

This rulemaking corrects a typographical error in an example of how to apply the application deadline for students who return to an eligible Louisiana postsecondary institution after enrolling for the first time in an accredited out-of-state institution; extends the deadline for TOPS applicants to submit required supplemental documentation; and adds computer courses that can be substituted for the required computer courses in the TOPS core curriculum. (SG0785NI)

The text of this proposed Rule can be viewed in the Emergency Rule section of this edition of the *Louisiana Register*.

**Family Impact Statement**

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., June 11, 2007, to Melanie

Amrhein, 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: Scholarship/Grant Programs**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed changes are required to correct identified discrepancies in the Scholarship/Grant Program Rules and promulgate acceptable core curriculum substitutions recently adopted by BESE. This change incorporates into the rules recent BESE curriculum changes (with the concurrence of the Board of Regents) and LASFAC deadline changes already in effect. These changes will not significantly alter the eligibility criteria for a TOPS award and thus will have a minimal impact on TOPS expenditures.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Revenue collections of state and local governments will not be affected by the proposed changes.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no estimated effects on economic benefits to directly affected persons or non-governmental groups resulting from these measures.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There are no anticipated effects on competition and employment resulting from these measures.

George Eldredge  
General Counsel  
0705#055

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**START Savings Program—2006 Interest Rates  
(LAC 28:VI.315)**

The Louisiana Tuition Trust Authority announces its intention to amend its START Savings Program Rules (R.S. 17:3091 et seq.).

As required by R.S. 17:3093.D(1)(f), this rulemaking will provide the determination of the interest rates paid and approved by the State Treasurer for deposits in START accounts invested in fixed earnings and for the Earnings Enhancements Fund for the calendar year ending December 31, 2006. (ST0784NI)

The text of this proposed Rule can be viewed in the Emergency Rule section of this edition of the *Louisiana Register*.

**Family Impact Statement**

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments on the proposed changes (ST0784NI) until 4:30 p.m., June 11, 2007, to Melanie Amrhein, 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: START Savings Program  
2006 Interest Rates**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There are no estimated implementation costs or savings to state or local governmental units as a result of these changes. This amendment reflects the actual earning realized by START account owners who invested in the Louisiana Principal Protection investment option and the actual earnings realized on the investment of Earnings Enhancements. This increase in START funds belongs to the account owner (it is not state general fund money), and no expenditure of state general funds is required. No cost to the state will result from this change.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Revenue collections of state and local governments will not be affected by the proposed changes.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
These changes adopt the actual interest rates for deposits made to the START Louisiana Principal Protection investment option and earnings enhancements for the year ending December 31, 2006.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There are no anticipated effects on competition and employment resulting from these measurements.

George Eldredge  
General Counsel  
0705#056

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

CAIR NO<sub>x</sub> Annual and Ozone Season Trading Programs  
(LAC 33:III.506)(AQ285)

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.506 (Log #AQ285).

This proposed rule defines the state's methodology under the Clean Air Interstate Rule (CAIR) Nitrogen Oxide (NO<sub>x</sub>) Annual and Ozone Season Trading Programs for allocating NO<sub>x</sub> allowances to electrical generating units (EGUs) subject to CAIR. Section 51.123 of the federal CAIR allows states some flexibility in implementation of certain rule

provisions related to methods for allocating NO<sub>x</sub> allowances. This rule substitutes for 40 CFR Part 97, Subpart EE (CAIR NO<sub>x</sub> Allowance Allocations), §97.141 and §97.142, and for 40 CFR Part 97, Subpart EEEE (CAIR NO<sub>x</sub> Ozone Season Allowance Allocations), §97.341 and §97.342. This rule is concurrently being proposed as a revision to the Louisiana State Implementation Plan for air quality.

The CAIR was promulgated by the U.S. EPA on May 12, 2005. The federal rule addresses ozone and fine particulate air pollution by regulating emissions of sulfur dioxide (SO<sub>2</sub>) and NO<sub>x</sub> from EGUs in certain states and the District of Columbia. The federal rule establishes a budget cap for each state for emissions of these pollutants and allows for emissions trading. Following promulgation of CAIR in 2005, EPA promulgated a Federal Implementation Plan (FIP) for the rule on April 28, 2006. The FIP, which became effective on June 27, 2006, includes the federal methodology for allocation of NO<sub>x</sub> allowances. The FIP provides states with an option to submit an abbreviated State Implementation Plan (SIP), and some limited flexibility in implementation of certain federal rule provisions related to CAIR. Louisiana will remain under the provisions of the FIP for the CAIR NO<sub>x</sub> annual and ozone season trading programs with the exception of the provisions established in this rule. Should this rule not be promulgated, the state will remain under the allocation method as set forth in the FIP.

To determine the impact of CAIR implementation on Louisiana electricity ratepayers, DEQ requested assistance from the Louisiana Public Service Commission (LPSC). Pursuant to this request, the LPSC contracted for the service of the Louisiana State University Center of Energy Studies. Recommendations concerning the implementation of CAIR in Louisiana were provided to DEQ from the LPSC in the "Staff Report" and "Supplement to Primary Staff Recommendations." The provisions of this rule are consistent with the LPSC recommendations. Upon promulgation, this rule will be submitted to EPA as a revision to the air quality SIP for Louisiana. The submittal of an approvable abbreviated SIP revision for the CAIR NO<sub>x</sub> annual and ozone season trading programs will satisfy Louisiana's obligations under Section 110(a)(2)(D)(i) of the Clean Air Act (CAA). The basis and rationale for this proposed rule are to improve air quality through a reduction of intrastate and interstate emissions of NO<sub>x</sub> from EGUs subject to CAIR.

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 5. Permit Procedures**

**§506. Clean Air Interstate Rule Requirements**

A. Clean Air Interstate Rule (CAIR) Nitrogen Oxide (NO<sub>x</sub>) Annual Program. This Subsection is adopted in lieu of 40 CFR 97.141 and 97.142 as promulgated under the CAIR Federal Implementation Plan (FIP) NO<sub>x</sub> Annual Trading Program on April 28, 2006, at 71 FR 25328. All provisions of 40 CFR Part 97, Subparts AA – HH, continue to apply,

with the exception of §97.141 (Timing Requirements for CAIR NO<sub>x</sub> Allowance Allocations) and §97.142 (CAIR NO<sub>x</sub> Allowance Allocations). The provisions of this Subsection state how the CAIR NO<sub>x</sub> annual allowances shall be allocated in accordance with this Section and 40 CFR 97.144(a).

1. Definitions. The terms used in Subsection A of this Section have the meaning given to them in the CAIR FIP (40 CFR Part 97 as promulgated on April 28, 2006), except for those terms defined herein:

*Certified Unit or Contract*—an electricity-generating unit or contract that has been certified by the LPSC or approved by a municipal authority but was not in operation on, or approved by, December 31, 2004.

*Department*—the Louisiana Department of Environmental Quality.

*LPSC*—the Louisiana Public Service Commission.

*LPSC or Municipal Certification*—the process under which the LPSC certifies, or the relevant municipal authority approves, an electricity-generating facility and/or all of its component units, additions, and up-rated or re-powered units as being in the public convenience and necessity. This process includes the certification or approval of long-term contracts that dedicate a portion of the electrical output of any generation facility to a utility unit. Long-term contracts are those contracts of at least one year in duration, provided that the municipality or utility unit expects to receive power under the contract within one year of the contract execution.

*Municipal Authority*—a municipal corporation, public power authority, or other political subdivision including, but not limited to, the Louisiana Energy and Power Authority.

*Non-Utility Unit*—an electricity-generating unit that has not been certified by the LPSC or approved by a municipal authority. This includes, but is not limited to, units owned by independent power producers (IPPs) that are the owners or operators of electricity-generating units that produce electricity for sale, and *cogenerators* as defined in 40 CFR Part 97.

*Utility Unit*—a certified unit that is in operation, a previously-operational certified unit, or a non-utility unit that has an effective and active long-term contract with a utility unit. Long-term contracts are those contracts of at least one year in duration, provided that the municipality or utility unit expects to receive power under the contract within one year of the contract execution.

2. Allocation of CAIR NO<sub>x</sub> Annual Allowances. Total NO<sub>x</sub> allowances allocated per control period shall not be in excess of the CAIR NO<sub>x</sub> annual budget as found in 40 CFR 97.140 (35,512 tons per control period from 2009-2014 and 29,593 tons per control period thereafter).

a. Non-Utility Units. For each CAIR non-utility unit, the NO<sub>x</sub> allowances shall be equal to the average of the actual NO<sub>x</sub> annual emissions of the three calendar years immediately preceding the year in which the control period allocations are submitted to the administrator. The actual NO<sub>x</sub> annual emissions as reported in the emission inventory required by LAC 33:III.919 shall be used, except that the allowances submitted in 2007 shall use the actual NO<sub>x</sub> emissions for calendar years 2002, 2003, and 2004. When data is not available in the emission inventory, data reported to the Federal Acid Rain Program shall be used. When actual reported NO<sub>x</sub> annual emissions data are available for only

two of the three calendar years immediately preceding the deadline for submission of the control period allocations, the average of the actual reported NO<sub>x</sub> annual emissions data for those two years shall be used. When actual reported NO<sub>x</sub> annual emissions data are available for only one of the three calendar years, the actual reported NO<sub>x</sub> annual emissions data for that one year shall be used. When no actual reported NO<sub>x</sub> annual emissions data for any of the three calendar years are available, no allocations shall be made under this Paragraph.

b. Certified Units. A certified unit subject to CAIR shall be allocated NO<sub>x</sub> allowances for the control period in which the unit will begin operation, and for each successive control period, for which no NO<sub>x</sub> allowances have been previously allocated until operating data are available for the three calendar years immediately preceding the deadline for submission of the control period allocations. Until a unit has three calendar years of operating data immediately preceding the allocation submittal deadline, the converted heat input as calculated in Clause A.2.b.i or ii of this Section shall be used to allocate allowances for the unit. The certified unit shall be treated as a utility unit for the purposes of this allocation, except that converted heat input shall be used instead of adjusted heat input. Converted heat input is calculated as follows.

i. For a coal-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output of the generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the year.

ii. For a non-coal-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the year.

c. Utility Units. The department shall allocate CAIR NO<sub>x</sub> allowances to each CAIR utility unit by multiplying the CAIR NO<sub>x</sub> budget for Louisiana (40 CFR 97.140), minus the allowances allocated under Subparagraph A.2.a of this Section, by the ratio of the adjusted baseline heat input of the CAIR utility unit and/or converted heat input of a certified unit to the total amount of adjusted baseline heat input and converted heat input of all CAIR utility units and certified units in the state and rounding to the nearest whole allowance. The adjusted baseline heat input (in MMBTU) used with respect to the CAIR NO<sub>x</sub> annual allowance for each CAIR utility unit shall be established as follows.

i. The average of the unit's control period adjusted heat input for the three calendar years immediately

preceding the deadline for submission of allocations to the administrator shall be used (except that the allocation submitted in 2007 shall use the average of the control period adjusted heat input for calendar years 2002, 2003, and 2004), with the control period adjusted heat input for each year calculated as follows.

(a). If the unit is coal-fired during a year, the unit's control period heat input for that year shall be multiplied by 100 percent.

(b). If the unit is oil-fired during a year, the unit's control period heat input for that year shall be multiplied by 60 percent.

(c). If the unit is not subject to Subclause A.2.c.i.(a) or (b) of this Section, the unit's control period heat input for the year shall be multiplied by 40 percent.

ii. A unit's control period heat input, status as coal-fired or oil-fired, and total tons of NO<sub>x</sub> emissions during a calendar year shall be determined in accordance with 40 CFR Part 97 and reported in accordance with LAC 33:III.919.

### 3. Timing Requirements for CAIR NO<sub>x</sub> Annual Allowance Allocations

a. By April 30, 2007, the department shall submit to the administrator the CAIR NO<sub>x</sub> annual allowance allocations, in a format prescribed by the administrator and in accordance with Paragraph A.2 of this Section, for the control periods in 2009, 2010, and 2011.

b. By October 31, 2008, for the year 2012, and by October 31 of each year thereafter, the department shall submit to the administrator CAIR NO<sub>x</sub> annual allowance allocations, in a format prescribed by the administrator and in accordance with Paragraph A.2 of this Section, for the control period in the fourth year after the year of the applicable deadline for submission under this Section.

B. Clean Air Interstate Rule (CAIR) Nitrogen Oxide (NO<sub>x</sub>) Ozone Season Program. This Subsection is adopted in lieu of 40 CFR 97.341 and 97.342 as promulgated under the CAIR Federal Implementation Plan (FIP) NO<sub>x</sub> Ozone Season Trading Program on April 28, 2006, at 71 FR 25328. All provisions of 40 CFR Part 97, Subparts AAAA – HHHH, continue to apply, with the exception of §97.341 (Timing Requirements for CAIR NO<sub>x</sub> Ozone Season Allowance Allocations) and §97.342 (CAIR NO<sub>x</sub> Ozone Season Allowance Allocations). The provisions of this Subsection state how the CAIR NO<sub>x</sub> ozone season allowances shall be allocated in accordance with this Section and 40 CFR 97.343(a).

1. Definitions. The terms used in Subsection B of this Section have the meaning given to them in the CAIR FIP (40 CFR Part 97 as promulgated on April 28, 2006), and in Paragraph A.1 of this Section.

2. Allocation of CAIR NO<sub>x</sub> Ozone Season Allowances. Total NO<sub>x</sub> ozone season allowances allocated per control period shall not be in excess of the CAIR NO<sub>x</sub> ozone season budget as found in 40 CFR 97.340 (17,085 tons per control period from 2009-2014 and 14,238 tons per control period thereafter).

a. Non-Utility Units. For each CAIR non-utility unit, the NO<sub>x</sub> allowances shall be equal to the average of the actual NO<sub>x</sub> ozone season emissions of the three calendar years immediately preceding the year in which the control period allocations are submitted to the administrator. The

actual NO<sub>x</sub> ozone season emissions as reported in the emission inventory required by LAC 33:III.919 shall be used, except that the allowances submitted in 2007 shall use the actual NO<sub>x</sub> emissions for calendar years 2002, 2003, and 2004 that were reported to the Federal Acid Rain Program. When data is not available in the emission inventory, data reported to the Federal Acid Rain Program shall be used. When actual reported NO<sub>x</sub> ozone season emissions data are available for only two of the three calendar years immediately preceding the deadline for submission of the control period allocations, the average of the actual reported NO<sub>x</sub> ozone season emissions data for those two years shall be used. When actual reported NO<sub>x</sub> ozone season emissions data are available for only one of the three calendar years, the actual reported NO<sub>x</sub> ozone season emissions data for that one year shall be used. When no actual reported NO<sub>x</sub> ozone season emissions data for any of the three calendar years are available, no allocations shall be made under this Paragraph.

b. Certified Units. A certified unit subject to CAIR shall be allocated NO<sub>x</sub> allowances for the ozone season of the control period in which the unit will begin operation, and for each successive ozone season in a control period, for which no NO<sub>x</sub> allowances have been previously allocated until ozone season operating data are available for the three calendar years immediately preceding the deadline for submission of the control period allocations. Until a unit has three years of ozone season operating data preceding the allocation submittal deadline, the converted heat input as calculated in Clause B.2.b.i or ii of this Section shall be used to allocate ozone season allowances for the unit. The certified unit shall be treated as a utility unit for purposes of this allocation, except that ozone season converted heat input shall be used instead of ozone season adjusted heat input. Ozone season converted heat input is calculated as follows.

i. For a coal-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output of the generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU and multiplied by 5/12. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the year.

ii. For a non-coal-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU and multiplied by 5/12. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the year.

c. Utility Units. The department shall allocate CAIR NO<sub>x</sub> ozone season allowances to each CAIR utility unit by multiplying the CAIR NO<sub>x</sub> ozone season budget for Louisiana (40 CFR 97.340), minus the allowances allocated

under Subparagraph B.2.a of this Section, by the ratio of the ozone season adjusted baseline heat input of the CAIR utility unit and/or converted heat input of a certified unit to the total amount of ozone season adjusted baseline heat input and converted heat input of all CAIR utility units and certified units in the state and rounding to the nearest whole allowance. The ozone season adjusted baseline heat input (in MMBTU) used with respect to the CAIR NO<sub>x</sub> ozone season allowance for each CAIR utility unit shall be established as follows.

i. The average of the unit's control period ozone season adjusted heat input for the three calendar years immediately preceding the deadline for submission of allocations to the administrator shall be used (except that the allocation submitted in 2007 shall use the average of the control period ozone season adjusted heat input for calendar years 2002, 2003, and 2004), with the control period ozone season adjusted heat input for each year calculated as follows.

(a). If the unit is coal-fired during a year, the unit's control period ozone season heat input for that year shall be multiplied by 100 percent.

(b). If the unit is oil-fired during a year, the unit's control period ozone season heat input for that year shall be multiplied by 60 percent.

(c). If the unit is not subject to Subclause B.2.c.i.(a) or (b) of this Section, the unit's control period ozone season heat input for the year shall be multiplied by 40 percent.

ii. A unit's control period ozone season heat input, status as coal-fired or oil-fired, and total tons of NO<sub>x</sub> ozone season emissions during a calendar year shall be determined in accordance with 40 CFR Part 97 and reported in accordance with LAC 33:III.919.

3. Timing Requirements for CAIR NO<sub>x</sub> Ozone Season Allowance Allocations

a. By April 30, 2007, the department shall submit to the administrator the CAIR NO<sub>x</sub> ozone season allowance allocations, in a format prescribed by the administrator and in accordance with Paragraph B.2 of this Section, for the control periods in 2009, 2010, and 2011.

b. By October 31, 2008, for the year 2012, and by October 31 of each year thereafter, the department shall submit to the administrator the CAIR NO<sub>x</sub> ozone season allowance allocations, in a format prescribed by the administrator and in accordance with Paragraph B.2 of this Section, for the control period in the fourth year after the year of the applicable deadline for submission under this Section.

C. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:1597 (September 2006), amended LR 33:

A public hearing on the proposed rule and SIP revision will be held on June 26, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed rule and SIP revision. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at

(225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed rule and SIP revision. Persons commenting should reference this proposed regulation by AQ285. Such comments must be received no later than July 3, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto:judith.schuerman@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ285. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: CAIR NO<sub>x</sub> Annual and Ozone Season Trading Programs

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation costs or savings are expected to be minimal from promulgation of this rule. Local governments that own municipal electrical generating units (EGUs) may incur increased costs to comply with the federal Clean Air Interstate Rule (CAIR) from purchasing additional emission allowances if needed to operate. State and local governmental units as electrical ratepayers may incur additional minimal costs for electricity.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Impact on revenue collections is estimated to be nil for state or local governmental units that do not own EGUs subject to the federal rule. Impact on revenue collections of local governmental units owning municipal EGUs is expected to be minimal. These local governmental units may pass costs or savings to their electrical ratepayers.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed rule is estimated to increase the average ratepayer's annual electrical cost by \$10.11, which represents a savings of \$0.69 annually when compared to the estimated increase in electrical cost under implementation of the federal CAIR rule, which would be an estimated cost to the average ratepayer of \$10.80 per year.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the allowance allocation method in this proposed rule will gradually cause a change in electrical production from older, inefficient gas-fired units to newer, more efficient facilities. This may result in some minimal impact on employment for workers at gas-fired EGUs.

However, new employment opportunities may arise from the operation of new or replacement EGUs.

Herman Robinson, CPM  
Executive Counsel  
0705#039

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

Hazardous Waste Corrections  
(LAC 33:V.109, 305, 323, 517, 2309, 3013,  
3719, 4339, 4357, 4501, and 4901)(HW097)

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, 305, 323, 517, 2309, 3013, 3719, 4339, 4357, 4501, and 4901 (Log #HW097).

This proposed rule makes minor corrections to several sections of the hazardous waste regulations. The corrections include missing and out-of-place words, incorrect citations, formatting errors, missing capitalizations, and a modified definition. These corrections must be made to ensure the hazardous waste regulations are not misinterpreted. The definition of groundwater is being modified to ensure consistency throughout the Environmental Quality regulations. The basis and rationale for this rule are to ensure the proper management of hazardous waste.

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.

\* \* \*

*Groundwater*—water located beneath the ground surface or below a surface water body in a saturated zone or stratum.

\* \* \*

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, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218,

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 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), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:

#### Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits

##### §305. Scope of the Permit

A. - D.2.e. ...

f. submits a complete report within five days of receiving any hazardous waste on an unmanifested basis;

g. complies with all recordkeeping requirements of LAC 33:V.Subpart 1; and

D.2.h. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 23:567 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1105 (June 1998), LR 24:1690, 1759 (September 1998), LR 25:435 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:708 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3116 (December 2005), LR 33:

##### §323. Suspension, Modification or Revocation and Reissuance, and Termination of Permits

A. ...

B. If the administrative authority decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the administrative authority may be appealed to the Department of Environmental Quality (DEQ), Legal Affairs Division, in accordance with R.S. 30:2050.21.

1. - 4.e....

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 14:790 (November 1988), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 20:1109 (October 1994), LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2467 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2454 (October 2005), LR 33:

**Chapter 5. Permit Application Contents**  
**Subchapter C. Permit Applications: Parts I and II**

**§517. Part II Information Requirements (the Formal Permit Application)**

The formal permit application information requirements presented in this Section reflect the standards promulgated in LAC 33:V.Subpart 1. These information requirements are necessary in order to determine compliance with all standards. Responses and exhibits shall be numbered sequentially according to the technical standards. The permit application must describe how the facility will comply with each of the sections of LAC 33:V.Chapters 15-37 and 41. Information required in the formal permit application shall be submitted to the administrative authority and signed in accordance with requirements in LAC 33:V.509. The description must include appropriate design information (calculations, drawings, specifications, data, etc.) and administrative details (plans, flow charts, decision trees, manpower projections, operating instructions, etc.) to permit the administrative authority to determine the adequacy of the hazardous waste permit application. Certain technical data, such as design drawings, specifications, and engineering studies, shall be certified by a Louisiana registered professional engineer. If a section does not apply, the permit application must state it does not apply and why it does not apply. This information is to be submitted using the same numbering system and in the same order used in these regulations:

A. - T.4.c. ...

i. delineates the extent of the plume on the topographic map such as required under LAC 33:V.515.A.15; and

T.4.c.ii. - W. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 13:433 (August 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998), LR 24:1691 (September 1998), LR 25:436 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1465 (August 1999), LR 25:1799 (October 1999), repromulgated LR 26:1608 (August 2000), repromulgated LR 26:2003 (September 2000), amended LR 27:287 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**Chapter 23. Waste Piles**

**§2309. Monitoring and Inspection**

A. - B.1. ...

2. proper functioning of wind dispersal control systems, where present;

3. the presence of leachate in and proper functioning of leachate collection and removal systems, where present. Leachate must be disposed of properly; and

B.4. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces**

**§3013. Standards to Control Metals Emissions**

A. - B.2.b.ii. ...

3. Terrain-Adjusted Effective Stack Height (TESH)

B.3.a. - I. ...

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 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 22:824 (September 1996), repromulgated LR 22:980 (October 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1741 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**Chapter 37. Financial Requirements**

**Subchapter F. Financial and Insurance Instruments**

**§3719. Wording of the Instruments**

A. A trust agreement for a trust fund as specified in LAC 33:V.3707.A or 3711.A or 4403.A or 4407.A must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

1. The wording of the trust agreement is as follows.

Trust Agreement

\*\*\*

[See Prior Text in Trust Agreement]

A.2. - N.2, certification ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180.

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 11:686 (July 1985), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 16:47 (January 1990), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1514 (November 1997), repromulgated LR 23:1684 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2493 (November 2000), amended by the Office of Environmental Assessment, LR 30:2023 (September 2004), amended by the Office of Environmental Assessment, LR 31:1573 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2472 (October 2005), LR 33:

**Chapter 43. Interim Status**

**Subchapter C. Contingency Plan and Emergency Procedures**

**§4339. Purpose and Implementation of Contingency Plan**

A. Interim status facilities must comply with LAC 33:V.1513.A.1 and 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste,

Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**Subchapter D. Manifest System, Recordkeeping, and Reporting**

**§4357. Operating Record**

A. - B.2. ...

3. the estimated or manifest-reported weight, or volume and density, where applicable, in one of the units of measure specified in Table 1 of this Section:

Table 1. Units For Reporting	
Units of Measure	Code <sup>1</sup>
Gallons	G
Gallons per Hour	E
Gallons per Day	U
Liters	L
Liters per Hour	H
Liters per Day	V
Short Tons per Hour	D
Metric Tons per Hour	W
Short Tons per Day	N
Metric Tons per Day	S
Pounds per Hour	J
Kilograms per Hour	R
Cubic Yards	Y
Cubic Meters	C
Acres	B
Acre-feet	A
Hectares	Q
Hectare-meter	F
British thermal units per Hour	I

<sup>1</sup> Single digit symbols are used here for data processing purposes.

4. - 16. ...

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 15:378 (May 1989), LR 16:220 (March 1990), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1744 (September 1998), LR 25:484 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1803 (October 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**Subchapter M. Landfills**

**§4501. Closure and Post-Closure**

A. ...

B. In the closure and post-closure plans, the owner or operator must address the following objectives and indicate how they will be achieved:

1. control pollutant migration from the facility via groundwater, surface water, and air;
2. control surface water infiltration, including prevention of pooling;

B.3. - D.8. ...

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 21:266 (March 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**Chapter 49. Lists of Hazardous Wastes**

[Comment: Chapter 49 is divided into two sections: Category I Hazardous Wastes, which consist of Hazardous Wastes from nonspecific and specific sources (F and K wastes), Acute Hazardous Wastes (P wastes), and Toxic Wastes (U wastes) (LAC 33:V.4901); and Category II Hazardous Wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).]

**§4901. Category I Hazardous Wastes**

A. - B.2.b.i.(c). ...

(d). high-rate aeration, which is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhancing biological activity, and:

- (i). the unit employs a minimum of 6 hp per million gallons of treatment volume; and either
- (ii). the hydraulic retention time of the unit is no longer than five days; or
- (iii). the hydraulic retention time is no longer than 30 days, and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic;

ii. generators and treatment, storage, and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage, and disposal facilities must maintain, in their operating or other onsite records, documents and data sufficient to prove that:

(a). the unit is an aggressive biological treatment unit as described in Clause B.2.b.i of this Section; and

(b). the sludges sought to be exempted from the definitions of F037 and/or F038 were actually generated in the aggressive biological treatment unit.

B.2.c. - G, Table 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:791 (November 1988), LR 15:182 (March 1989), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829, 840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:304 (March 2001), LR 27:715 (May 2001), LR 28:1009 (May 2002), LR 29:324 (March 2003), amended by the Office of Environmental Assessment, LR 31:1573 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:831 (May 2006), LR 33:

A public hearing will be held on June 26, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting



should reference this proposed regulation by HW097. Such comments must be received no later than July 3, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto:judith.schuerman@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of HW097. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Hazardous Waste Corrections**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There are no expected implementation costs or savings to state or local governmental units by the proposed rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no estimated effect on revenue collections of state or local governmental units by the proposed rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups by the proposed rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no estimated effect on competition and employment by the proposed rule.

Herman Robinson  
Executive Counsel  
0705#040

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

Notification Requirements and Reportable Quantity List  
(LAC 33:I.3905, 3919, 3925, and 3931)(OS078)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.3905, 3919, 3925, and 3931 (Log #OS078).

This proposed rule modifies the table of reportable quantities (RQs) in LAC 33:I.3931 to retain RQs for the highly reactive volatile organic compounds (HRVOC) ethylene, propylene, and combinations of ethylene and propylene or "total" HRVOC. RQs are added for some toxic air pollutants (TAPs) and revised for other TAPs. The department has reviewed new information concerning the frequency and amounts of HRVOC unauthorized discharges and will retain the current RQs for ethylene, propylene, and combinations of ethylene and propylene. The RQs for the other HRVOCs will return to their previous values. The rule will clarify LAC 33:I.3919 regarding the timing for notification of unauthorized discharges related to groundwater contamination, and provide for submittal of periodic update reports concerning unauthorized discharges in which an ongoing investigation is being conducted until the investigation is completed and the required information is submitted. Based on comments received, the rule will incorporate the unauthorized discharge reporting requirements currently in LAC 33:III.5107.B into LAC 33:I.Chapter 39, thereby streamlining reporting requirements and removing duplicative reporting language from the regulations. In order to complete this streamlining process, some TAP RQs are added to the table at LAC 33:I.3931, and some TAP RQs in the table are lowered. The definition of groundwater is being modified to ensure consistency throughout the Environmental Quality regulations. The basis and rationale for this proposed rule are to update the RQs in the regulations, streamline existing requirements, and provide for submittal of periodic update reports concerning unauthorized discharges.

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 I. Office of the Secretary  
Subpart 2. Notification**

**Chapter 39. Notification Regulations and Procedures  
for Unauthorized Discharges**

**Subchapter A. General**

**§3905. Definitions**

A. The following terms as used in these regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.  
\* \* \*

*Groundwater*—water located beneath the ground surface or below a surface water body in a saturated zone or stratum.  
\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), amended by the Office of Secretary, Legal Affairs Division, LR 33:

**Subchapter C. Requirements for Prompt Notification**  
**§3919. Notification Requirements for Unauthorized**  
**Discharges with Groundwater Contamination**  
**Impact**

A. In the event that any unauthorized discharge results in the contamination of the groundwaters of the state or otherwise moves in, into, within, or on any saturated subsurface strata, the discharger shall notify the Office of Environmental Compliance, Emergency and Radiological Services Division, SPOC, within seven days.

B. Dischargers shall submit written notification in accordance with LAC 33:I.3925 or any permit or license terms and conditions issued under the Louisiana Environmental Quality Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2076(D), 2183(I), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), repealed LR 19:1022 (August 1993), repromulgated and amended LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:

**Subchapter D. Notification Procedures**  
**§3925. Written Notification Procedures**

A. - A.2. ...

3. For information required by Subsection B of this Section that is not available at the time of submittal of the written notification report due to an ongoing investigation, updates of the status of the ongoing investigation of the unauthorized discharge shall be submitted every 60 days until the investigation has been completed and the required information has been submitted.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C) and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:1669 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:

**Subchapter E. Reportable Quantities for Notification of**  
**Unauthorized Discharges**  
**§3931. Reportable Quantity List for Pollutants**

A. - A.2. ...

B. Modifications or Additions. The following table contains modifications to the federal reportable quantity lists incorporated by reference in Subsection A of this Section, as well as reportable quantities for additional pollutants. If a pollutant is listed with more than one reportable quantity, the lower-value reportable quantity shall be used.

Pollutant	Synonym	CAS No. <sup>1</sup>	RCRA <sup>2</sup> Waste Number	Pounds
Acetaldehyde	Acetic aldehyde	75070	U001	700
Acrylamide	Acrylic amide	79061	U007	25 <sup>6</sup>
Acrylic acid	Acroleic acid, propene acid	79107		400 <sup>6</sup>
Acrylonitrile		107131	U009	35 <sup>6</sup>
Allyl chloride	3-Chloropropene	107051		1000/10 <sup>@</sup>
Aniline	Aminobenzene	62533	U012	5000/600 <sup>@</sup>
Antimony*		7440360		5000/38 <sup>@</sup>
Antimony compounds		20008		100/38 <sup>@</sup>
Barium*		7440393		100/38 <sup>@</sup>
Barium compounds		20020		100/38 <sup>@</sup>
Biphenyl	1,1-biphenyl, xenene	92524		98 <sup>6</sup>
n-Butyl alcohol	1-Butanol	71363	U031	5000/1000 <sup>@</sup>
Carbonic dichloride	Phosgene	75445	P095	10/1 <sup>@</sup>
Chlorinated dibenzo furans, all isomers				1/1 <sup>@</sup>
Chlorinated dibenzo-p-dioxins, TCDD and OCDD isomers				1 <sup>6</sup>
Chlorine dioxide	Chlorine oxide	10049044		1
Chlorobenzene	Benzene chloride	108907	U037	25 <sup>6</sup>
Chromium <sup>3</sup> *		7440473		5000/25 <sup>@</sup>
Chromium compounds		20064		100/25 <sup>@</sup>
Copper <sup>3</sup>		7440508		5000/25 <sup>@</sup>
Copper compounds		20086		25
Cumene	Isopropyl benzene	98828	U055	5000/1000 <sup>@</sup>
1,2-Dichloroethane	Ethylene dichloride, EDC	107062	U077	49 <sup>6</sup>
Dichloromethane	Methylene chloride, DCM	75092	U080	540 <sup>6</sup>
Ethyl acrylate	2-Propenoic acid, ethyl ester	140885	U113	1000/10 <sup>@</sup>
Ethylene	Ethene	74851		5000 <sup>#</sup> or 100 <sup>+</sup>
Glycol ethers**				100
Hexane	Hexyl hydride	110543		5000/1000 <sup>@</sup>
Hydrogen chloride	Hydrochloric acid	7647010		5000/500 <sup>@</sup>
Hydrogen fluoride	Hydrofluoric acid	7664393	U134	100/10 <sup>@</sup>
Maleic anhydride	cis-Butenedioic anhydride	108316	U147	70 <sup>6</sup>
Manganese*	Colloidal manganese	7439965		100/75 <sup>@</sup>

Pollutant	Synonym	CAS No. <sup>1</sup>	RCRA <sup>2</sup> Waste Number	Pounds
Manganese compounds				100/75 <sup>@</sup>
Methyl acrylate	2-Propenoic acid methyl ester	96333		10
Methyl ethyl ketone (MEK)	2-Butanone	78933	U159	5000/1000 <sup>@</sup>
Methyl isobutyl ketone	4-Methyl-2-pentanone	108101	U161	5000/1000 <sup>@</sup>
Methylmercaptan	Methanethiol	74931	U153	100/25 <sup>@</sup>
Methyl methacrylate	2-Methylacrylic acid methyl ester	80626	U162	1000/100 <sup>@</sup>
Methylene diphenyl diisocyanate	Methylene bisphenyl isocyanate	101688		1000
Nickel		7440020		25 <sup>6</sup>
Nickel compounds				25 <sup>6</sup>
Nitric acid	Hydrogen nitrate	7697372		1000/100 <sup>@</sup>
Nitrobenzene	Nitrobenzol	98953	U169	400 <sup>6</sup>
Oil				1 barrel
Phthalic anhydride	1,3-Isobenzofurandione	85449	U190	5000/400 <sup>@</sup>
Polynuclear aromatic hydrocarbons ***				1
Produced water				1 barrel
Propionaldehyde	Propionic aldehyde	123386		1000/100 <sup>@</sup>
Propylene	Propene	115071		100 <sup>+</sup>
Selenium		7782492		25 <sup>6</sup>
Sulfur dioxide				500
Sulfuric acid		7664939		75 <sup>6</sup>
Sweet pipeline gas (Methane/Ethane)				42000 (1,000,000 scf)
Toluene-2,4-diisocyanate		584849	U223	25 <sup>6</sup>
Toluene-2,6-diisocyanate		91087	U223	25 <sup>6</sup>
Vinyl acetate	Vinyl acetate monomer	108054		5000/100 <sup>@</sup>
Zinc		7440666		200 <sup>6</sup>
Zinc compounds				200 <sup>6</sup>
Volatile organic compounds not otherwise listed <sup>4</sup>				5000
Only those highly reactive volatile organic compounds listed below: ethylene and propylene <sup>5</sup>				100 <sup>+</sup>
F003 The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:			F003	100
Methyl isobutyl ketone		108101		5000/1000 <sup>@</sup>
n-Butyl alcohol		71363		5000/1000 <sup>@</sup>
F005 The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:			F005	100
Methyl ethyl ketone		78933	U159	5000/1000 <sup>@</sup>

\* No reporting of releases into the ambient air of this metal is required if the diameter of the pieces of solid metal released is equal to or exceeds 100 micrometers (0.004 inches).

\*\* The emissions of glycol ethers in one of the following three categories shall be totaled to determine if a reportable quantity has been exceeded.

1. Glycol ethers with an RQ of 100 refer only to the following compounds and not the general class of compounds: ethylene glycol monomethyl ether (CAS Number 109864), ethylene glycol monomethyl ether acetate (CAS Number 110496), ethylene glycol monoethyl ether (CAS Number 110805), ethylene glycol monoethyl ether acetate (CAS Number 111159), diethylene glycol dimethyl ether (CAS Number 111966), and ethylene glycol dimethyl ether (CAS Number 110714).

2. The federal RQ applies to any other mono- or di-ether of ethylene glycol, diethylene glycol, or triethylene glycol: R(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OR', where, n=1, 2, or 3; R = alkyl or aryl groups; and R' = R, H, or any group which, when removed, yields glycol ether with the structure: R(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OH. Polymers are excluded from the glycol ether category.

3. For all other glycol ethers there is no RQ assigned.

\*\*\* The emissions of all Polynuclear Aromatic Hydrocarbons (PAHs), excluding any PAHs otherwise listed, shall be totaled to determine if a reportable quantity has been exceeded.

<sup>1</sup> Chemical Abstracts Service Registry Number.

<sup>2</sup> Resource Conservation and Recovery Act of 1976, as amended.

<sup>3</sup> Prompt notification of releases of massive forms of these substances is not required if the diameter of the pieces of the substance released is equal to or exceeds 100 micrometers (0.004 inches).

<sup>4</sup> The emissions of all volatile organic compounds (VOCs), excluding any VOCs otherwise listed, shall be totaled to determine if a reportable quantity has been exceeded. VOC is defined in LAC 33:III.111, and exempt compounds are listed in LAC 33:III.2117.

<sup>5</sup> The emissions of these highly reactive VOCs shall be totaled to determine if an RQ has been exceeded.

<sup>6</sup> Only emissions to the atmosphere are applicable.

<sup>@</sup> The first RQ listed denotes the reportable quantity that will apply to unauthorized emissions based on total mass emitted into or onto all media within any consecutive 24-hour period. The second RQ listed denotes the reportable quantity that will apply to unauthorized emissions based on total mass emitted into the atmosphere.

<sup>†</sup> The RQ listed denotes the reportable quantity that will apply to unauthorized emissions based on total mass emitted into the atmosphere for facilities in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, St. Charles, St. James, St. John the Baptist, Pointe Coupee, and West Feliciana.

<sup>\*</sup> RQ for the state except the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, St. Charles, St. James, St. John the Baptist, Pointe Coupee, and West Feliciana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:751 (April 2004), LR 30:1669 (August 2004), amended by the Office of Environmental Assessment, LR 31:919 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:603 (April 2006), LR 32:2248 (December 2005), LR 33:640 (April 2007), LR 33:

A public hearing will be held on June 26, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS078. Such comments must be received no later than July 3, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto:judith.schuerman@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS078. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Notification Requirements and  
Reportable Quantity**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no expected implementation costs or savings to state or local governmental units by the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units by the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule revision may result in some increase in reporting workload and costs for affected facilities due to the addition of approximately 30 toxic air pollutants to the reportable quantity (RQ) table at LAC 33:I.3931.

Based upon the number of RQ decreases in the table at LAC 33:I.3931 and a review of the amounts of the toxic air pollutants that are routinely emitted statewide per the Toxics Emissions Data Inventory (TEDI), it is estimated that approximately 10 of the 30 RQ decreases may cause an increase in reporting. The department estimates a total cost to all affected facilities of less than \$100,000 for increased reporting.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The owners or operators of facilities that use or produce any of the 30 or so toxic air pollutants, who maintain their facilities and minimize unauthorized discharges, may gain a very slight advantage over their competitors who do not.

Herman Robinson  
Executive Counsel  
0705#041

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Recreational and Used Motor Vehicle Commission**

Recreational and Used Motor Vehicles  
(LAC 46:V.Chapters 27-36, 44, 47, and 48)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapters 4A and 4B, the Office of the Governor, Recreational and Used Motor Vehicle Commission, notice is hereby given that the Recreational and Used Motor Vehicle Commission proposes to amend current rules and regulations governing Chapter 27, The Recreational and Used Motor Vehicle Commission; Chapter 28, Definitions; Chapter 29, Licenses to be Issued by the Recreational and Used Motor Vehicle Commission; Chapter 31, License for a Salesman; Chapter 35, Buyer Identification Card; Chapter 36, Recreational Products Trade Shows; Motor Vehicle Trade Shows and Off -Site Displays; Chapter 37, Changes to be Reported to Commission; Chapter 39, Business Transactions; Chapter 43, License Renewal; Chapter 44, Educational Seminar; Chapter 45, Complaints; Chapter 47, Procedure for Adjudications before the Recreational and Used Motor Vehicle Commission; Chapter 48, Uniform Procedures to Designate the Territory Assigned to a Marine Dealer; and Chapter 49, Independent Marine Surveyor; and adopt proposed rules and regulations §4710 governing Hearing Procedures for Hearings on Cease and Desists Orders in accordance with R.S.786(D)(1).

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part V. Automotive Industry**

**Subpart 2. Recreational and Used Motor Vehicles**

**Chapter 27. The Recreational and Used Motor Vehicle  
Commission**

**§2701. Meetings of the Commission**

A. - B. ...

C. A public comment period shall be held at or near the beginning of each board meeting. Persons desiring to present public comments shall notify the board chairman no later than 48 hours prior to the date of the regular meeting and 72 hours prior to the date of a special meeting. All written requests to have an item or items placed on the agenda must indicate, in detail, what items they wish to discuss. Public discussions are limited only to items on the agenda. There will be a maximum of 30 minutes for all public comments to be heard and each person will be limited to three minutes. Additional time can be allowed by the chairman as he deems reasonable. Each person making public comments shall identify himself and the group, organization or company he represents, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(E)(1) and R.S. 42:5.D.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), LR 15:1058 (December 1989) LR 18:1116 (October 1992), LR 24:1682 (September 1998), LR 25:1792 (October 1999), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:2351 (November 2002), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

**§2703. Quorum of the Commission**

A. Eight members of the commission shall constitute a quorum for the transaction of official business. Fewer than a quorum may adjourn the meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(A).

HISTORICAL NOTE: Promulgated by Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), LR 24:1682 (September 1998), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

**§2705. Executive Director**

A. The Executive Director of the Louisiana Recreational and Used Motor Vehicle Commission shall be in charge of the commission's office and shall conduct and direct the activities thereof in the manner as directed by the commission. The employees of the commission shall report to the executive director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(D).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

**§2707. Correspondence with the Commission**

A. ...

B. Louisiana Recreational and Used Motor Vehicle Commission forms, applications and dealer aids are

recognized as the commission official forms for licensing and communication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(E).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

#### **§2709. Official Seal**

A. The official seal of the Louisiana Recreational and Used Motor Vehicle Commission shall be as follows. The outline of the state of Louisiana with a small star denoting the approximate location of Baton Rouge, which name appears to the left of the star. It shall be bordered by the inscription, Louisiana Recreational and Used Motor Vehicle Commission.

B. The executive director shall be the custodian of the official seal and shall affix the imprint or the facsimile thereof to all license certificates issued by the Louisiana Recreational and Used Motor Vehicle Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(D)(4).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

### **Chapter 28. Definitions**

#### **§2801. Definitions**

A. The word *person* as used herein shall mean any natural or juridical person, firm, association, corporation, trust partnership, limited liability company or any other legal entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(D)(4).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

### **Chapter 29. Licenses to be Issued by the Recreational and Used Motor Vehicle Commission**

#### **§2901. Dealers to be Licensed**

A. ...

B. Automotive dismantlers and parts recyclers, motor vehicle crushers, and dealers in used parts and accessories.

C. Used motor vehicle auctions and salvage pools are considered used motor vehicle dealers and must comply with licensing regulations contained herein.

D. Dealers, manufacturers, and distributors of new recreational products as defined at R.S. 32:781(22).

E. Brokers of used motor vehicles, used parts, and recreational products are considered to be dealers and must comply with licensing regulations contained therein.

F. Any person who rents or who sells on a rent with option to purchase program used motor vehicles not of the current or immediate prior year or new and used recreational products.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:784.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 24:1682 (September 1998), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission LR 30:436 (March 2004), repromulgated LR 30:792 (April 2004), LR 30:1477 (July

2004), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

#### **§2903. Dealer Licenses**

A. The dealer license will be issued in the legal name of the person as identified on the application for dealer license.

B. A dealer's license shall consist of a signed certificate bearing the official seal of the commission and the name and address of the dealership and assigned a dealer number, which shall be posted in a conspicuous place in the dealer's place or places of business.

C. Used motor vehicle dealers will be assigned a license number to be prefixed with a "UD" designation.

D. Automotive dismantlers and parts recyclers will be assigned a license number to be prefixed with a "AD" designation.

E. Crushers will be assigned a license number to be prefixed with a "CS" designation.

F. Dealers in used parts and accessories will be assigned a license number to be prefixed with a "UP" designation.

G. Beginning with licenses to be issued for 2008, dealers, manufacturers and distributors of recreational products will be assigned a license number to prefixed as follows.

- |                                  |    |
|----------------------------------|----|
| 1. Motorcycle and ATV Dealers    | MA |
| 2. Marine Products Dealers       | MP |
| 3. Recreational Vehicles Dealers | RV |
| 4. Utility Trailer Dealers       | UT |
| 5. Manufacturers                 | MS |
| 6. Distributors                  | DT |

H. Beginning with licenses to be issued for 2008, dealers who rent or who sell on a rent with option to purchase program will be assigned a license number to be prefixed with a "RD" number.

I. Each said license shall stand on its own, and for each said license, the dealer shall pay a separate licensing fee.

J. The valid dealer's license permits the dealer to transfer and assign titles, purchase and sell used motor vehicles without paying Louisiana general sales tax.

K. A dealer who has multiple locations will be allowed from his salesman's license to sell at all locations owned by him.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:784.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

#### **§2904. Additional Licensing, Requirements for the Automotive Dismantler and Parts Recycler and Used Parts and Accessories Dealers**

A. Every automotive dismantler and recycler issued an automotive dismantler's license and number will be permitted to purchase and sell salvage vehicles and transfer motor vehicle titles for the purpose of dismantling and selling the parts thereof to include the salvaged vehicle with title.

B. An automotive dismantler and parts recycler may offer a rebuilt, wrecked, abandoned or repairable motor vehicle at wholesale only. If such vehicle is offered for sale at retail, the dismantler will be operating as a used motor

vehicle dealer and is subject to licensing requirements and used motor vehicle dealer rules and regulations thereof. However, an automotive dismantler and parts recycler, duly licensed by the commission, shall have the authority to transfer the certificate of title as dealer under the Louisiana Certificate of Title Law, (i.e., transfer to another dealer without payment of tax). In order to sell a vehicle at retail, an automotive dismantler and parts recycle must be licensed hereunder as a used motor vehicle dealer providing a good and sufficient bond, executed by the applicant as principal by a surety company qualified to do business as surety in the sum of \$20,000.

C. At least one salesman's license shall be issued for each business. License fees charged and received by the commission shall be the same as for all other salesmen licensed by the commission as described in R.S. 781(33).

D. Used parts and accessories are broadly defined as any item removed from a used motor vehicle for the purpose of resale, except used batteries, wheel covers and hubcaps, and tires. Used parts and accessories do not include rebuilt or remanufactured parts and accessories.

E. License fees charged and received by the commission for licenses issued on dealers above shall be the same as for all other dealers licensed by this agency as is described in R.S.32:802(A).

F. At least one salesman's license shall be issued for each business. License fees charged and received by the commission shall be the same as for all other salesmen licensed by the commission as described in R.S. 32:802.

G. A surety bond will not be required for dealers whose principal business is selling used parts.

H. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:802.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1063 (November 1985), amended by Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 20:535 (May 1994), promulgated LR 20:645 (June 1994), LR 24:1683 (September 1998), amended LR 25:245 (February 1999), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2481 (November 2004), LR 33:

#### **§2905. Qualifications and Eligibility for Licensure**

A. - A.1. ...

2. All dealers, except those who deal solely with trailers, are required to keep in force a garage liability insurance policy on all vehicles offered for sale or used in any other capacity in demonstrating or utilizing the streets and roadways in accordance with the financial responsibility laws of the state. For those dealers who, in addition to selling vehicles, conduct the business of daily vehicle rentals, a separate renter's policy must be in effect.

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission LR 15:258 (April 1989), LR 15:375 (May1989), LR 24:1682 (September 1998), LR 25:245 (February 1999), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 30:436 (March 2004), amended by the Office of

the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2480 (November 2004), LR 33:

#### **§2907. Established Place of Business**

A. An established place of business shall mean a permanently enclosed building or structure either owned in fee, leased or rented, which meets local zoning or the municipal requirements, and regularly occupied by a person, firm or corporation, easily accessible to the public at which a regular business of selling used motor vehicles will be carried on in good faith; and, at which place of business shall be kept and maintained the books, records, and files necessary to conduct the business; and, shall not mean tents, temporary stands, lots, or other temporary quarters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1063 (November 1985), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

#### **Chapter 31. License for Salesman**

##### **§3101. Qualifications and Eligibility for Licensure**

A. - B. ...

C. Upon termination of employment, the salesman license will be returned by the dealer to the office of the Recreational and Used Motor Vehicle Commission within 10 days.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32: 781(33).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1063 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), LR 25:245 (February 1999), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2481 (November 2004), LR 33:

#### **Chapter 33. Automotive Dismantler and Recycler**

##### **§3301. License for Automotive Dismantler**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772.E.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1063 (November 1985), repealed by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

##### **§3303. Qualifications and Eligibility for Licensure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:752, 32:753, 32:754, 32:775 and 32:756, 32:772(E), and R.S. 32:773(A)(3).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1063 (November 1985), amended by Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 20:535 (May 1994), repromulgated LR 20:645 (June1994), LR 24:1683 (September 1998), amended LR 25:245 (February 1999), amended by Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2481 (November 2004), repealed by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

##### **§3305. Place of Business of an Automotive Dismantler and Recycler**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772.E(2).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1064 (November 1985), repealed by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

**Chapter 35. Buyer Identification Card**  
**§3503. Qualifications and Eligibility for Buyer Identification Card**

A. - A.1. ...

2. Completion of Official Recreational and Used Motor Vehicle Commission Application Forms. Payment of Louisiana state general sales tax is due on all vehicles purchased at a salvage pool or salvage disposal sale and applicant must certify that applicant will faithfully adhere to this requirement.

B. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:808.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1064 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:259 (April 1989), LR 15:1058 (December 1989), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:1588 (July 2002), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2481 (November 2004), LR 33:

**Chapter 36. Recreational Products Trade Shows**  
**Subchapter A. Recreational Products**

**§3601. Definitions**

*Exhibitor*—a nonresident dealer who meets the definition of a recreational products dealer subject to license under R.S. 32:811(A), but holds a current dealer license in another state and whose Louisiana business is limited to participation in vehicle trade shows or expositions in this state.

*Manufacturer or Distributor*—any person, resident or nonresident who fabricates, manufactures, or assembles new and unused vehicles or who in whole or in part maintains distributor representatives licensed under R.S.32:784.

*Permit*—a temporary license issued to a licensed used motor vehicle dealer, exhibitor, manufacturer or distributor, to display vehicles at a vehicle trade show or exposition. The permit issued shall be for the duration of the trade show only and shall not exceed 14 days.

*Promoter*—any person of Louisiana residence who alone or with others assumes the financial responsibility of a vehicle trade show or exposition in which vehicles are displayed by dealers, manufacturers or distributors, licensed under R.S. 32:784.

*Recreational Products Dealer*—any person subject to license under R.S. 32:784 and 811.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 16:113 (February 1990), LR 25:1792 (October 1999), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

**§3603. License, Fees and Applications**

A. Promoters of recreational products trade shows shall be required to obtain a license from the Louisiana Recreational and Used Motor Vehicle Commission and the license application shall consist of the following:

1. - 3. ...

4. a promoter shall also be required to obtain a permit for any trade show or exposition from the LRUMVC;

A.5 - B.5. ...

C. A recreational products dealer shall be required to obtain a permit to display recreational products in trade shows or expositions and consist of the following:

1. ...

2. A licensed recreational products dealer who participates in a recreational products show or exposition shall not be deemed to have an additional place of business at that show or exposition and shall not be charged any permit fees.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 16:113 (February 1990), amended LR 19:1021 (August 1993), LR 25:1792 (October 1999), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

**§3605. Qualifications and Eligibility of Recreational Products Trade Shows**

A. Promoters of recreational products trade shows or expositions in which a dealer, manufacturer, or distributor, which is required to be licensed under R.S. 32:784 and 811, displays vehicles, are required to obtain a permit from the LRUMVC no later than 60 days prior to the start date of the recreational products trade show and shall give the start date, ending date, location of the proposed trade show or exposition, and the type of vehicles to be promoted.

B. Within 10 days of the start of the event, the promoter shall also furnish a complete list of all licensed Louisiana dealers who will participate. This list shall also include the dealer's current dealer number.

C. A promoter may invite exhibitors to attend the trade show or exposition by providing proof to this commission that:

1. all Louisiana dealers, who are in Orleans or Jefferson Parish, who sell the type vehicles being promoted, starting within a thirty mile radius of the proposed location of the trade show or exposition, have been contacted and given the opportunity to attend and space is still available. A 50-mile radius of the proposed location of the trade show or exposition, have been contacted and given the opportunity to attend and space is still available;

2. all Louisiana dealers, who are not in Orleans or Jefferson Parish, who sell the type vehicles being promoted, starting within a 50 mile radius of the proposed location of the trade show or exposition, have been contacted and given the opportunity to attend and space is still available;

3. that the exhibitor invited is a greater distance away than a Louisiana dealer selling the same make, model or brand and that the Louisiana dealer has declined to attend; or

4. that the exhibitor invited will only display a make, model, or brand not sold by any Louisiana dealer.

D. - G. ...

H. Any promoter who violates any provisions of these rules and regulations shall be subject to the civil penalties under R.S. 32:788.

I. - J. ...



AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 16:113 (February 1990), amended LR 19:1021 (August 1993), LR 25:1792 (October 1999), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

#### **Subchapter B. Motor Vehicle Trade Shows and Off-Site Displays**

##### **§3606. Off-Site Displays—Marine Products**

A. - F. ...

G. Any licensee participating in an off-site display without the approval of the commission will be in violation of R.S. 32:814(A)(7)(d) and will result in a minimum penalty of \$500 per vehicle, per display for the first offense.

H. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 30:1018 (May 2004), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

##### **§3607. Off-Site Displays—Motorcycles, ATV's and RV's**

A. - E. ...

F. Any licensee participating in an off-site display without the approval of the commission will be in violation of R.S. 32:814(A)(7)(d) and will result in a minimum penalty of \$500 per vehicle, per display for the first offense.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(E)(1).

HISTORICAL NOTE: Promulgated by the Office of Governor, Used Motor Vehicle and Parts Commission, LR 30:1019 (May 2004), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

#### **Chapter 44. Educational Seminar**

##### **§4401. Required Attendance**

A. On or after January 1, 2005, every applicant for a license issued by the Recreational and Used Motor Vehicle Commission except those excluded by statute must attend a four-hour educational seminar approved and conducted by the Recreational and Used Motor Vehicle Commission.

1. The seminar will be conducted by employees of the Recreational and Used Motor Vehicle Commission and will be held at such place to be determined by the commission upon reasonable notice.

2. The seminar will be held once a month on a date and at a time to be determined by the commission upon reasonable notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:791(B)(3), 802(D), 811(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:2351 (November 2002), amended LR 30:436 (March 2004), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

##### **§4403. Certification**

A. Upon applying for a license from the commission, the applicant must attach a copy of the certificate of completion which documents that the dealership's general manager, office manager, title clerk or other responsible representative

of the dealership has attended the four-hour educational seminar. If the applicant has not completed the educational seminar, he must provide evidence that he has registered to attend such seminar within 60 days after issuance of the license.

B. The certificate shall list the participant's name, name and address of the dealer, date of completion and signature of instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:791(B)(3), 802(D), 811(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:2351 (November 2002), amended LR 30:436 (March 2004), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

##### **§4405. Educational Program**

A. The educational seminar will consist of information pertaining to the Recreational and Used Motor Vehicle Commission, Department of Revenue, Office of Motor Vehicles, Wildlife and Fisheries, Motor Vehicle Commission and Attorney General's Office. The items to be reviewed are as follows:

1. LRUMVC—background of the agency, laws, rules and regulations, license requirements, area of responsibility, complaint procedures, and non-delivery of titles;

2. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:791(B)(3), 802(D), 811(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:2352 (November 2002), repromulgated LR 28:2511 (December 2002), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

#### **Chapter 47. Procedure for Adjudications before the Recreational and Used Motor Vehicle Commission**

##### **§4701. Hearing Officer**

A. - B.4. ...

5. shall issue and enforce subpoenas in accordance with R.S. 32:785;

6. - 11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 24:246 (February 1999), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1221 (July 2006), LR 33:

##### **§4707. General Provisions on Hearings**

A. Notice of Hearing. The notice of hearing shall comply with the requirements of R.S. 32:785(C) and R.S. 49:955.

B. - D. ...

E. Subpoenas

1. Subpoenas shall be issued in accordance with R.S. 32:785(C)(3).

E.2. - F.5.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1222 (July 2006), amended LR 33:

##### **§4709. Hearings on Application Appeals**

A. Any person whose application for license has been denied in accordance with R.S. 32:785(A)(1) shall be provided written notice by certified or registered mail that

the application has been denied, the grounds for which the application has been denied and that the applicant has the right to appeal to the commission by making a written request for the appeal within 30 days following the receipt of the denial. No appeals will be considered beyond 30 days from receipt of the denial.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1222 (July 2006), amended LR 33:

#### **§4710. Hearings on Cease and Desist Orders**

A. A rule to show cause why a cease and desist order should not be issued shall be made in accordance with R.S.786(D)(1), and the notice shall be provided at least 10 days prior to the hearing either by certified or registered mail or by actual service made by a field investigator.

B. An interlocutory cease and desist order shall only be issued by the hearing officer based on the request of a consumer, licensed dealer or licensed manufacturer.

C. On a request for an interlocutory cease and desist order made pursuant to R.S. 32:786(D)(1), the hearing officer shall issue the order based on the evidence and information submitted by the party, and should the evidence fail to provide the grounds as required in R.S. 32:786(D)(1)(a) through (d), the interlocutory cease and desist order shall be denied and converted to a rule to show cause why a cease and desist order should not be issued.

D. Should the interlocutory cease and desist order be signed and issued, the hearing officer may require that the requesting party issue a bond in an amount commensurate with the activity sought to be enjoined.

E. The interlocutory cease and desist order shall notify the party against whom the order is issued that the order will remain in effect until the next available commission meeting date.

F. An interlocutory cease and desist order shall be noticed for hearing in which the commission shall consider whether to vacate the order or incorporate the order into a final commission order. Said notice shall be served on all parties at least five days prior to the hearing.

G. In accordance with R.S. 32:786(D)(2), the interlocutory cease and desist order shall notify the party against whom the order is issued of its right to appeal the order to the commission and that said appeal shall be heard at the next available commission meeting date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:786.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:

#### **§4711. Hearings on Area of Responsibility Disputes**

A. Before a dealer can file a notice of intent under R.S. 32:815 or 817 to establish itself as a new dealer, it must provide to the commission written approval from the manufacturer and that the manufacturer has notified its existing dealer that it intends to establish a new dealer.

B. When the commission receives a timely objection in accordance with either R.S. 32:815 or 817 the commission shall notice the dispute for hearing within 30 days following receipt of the objection; however, the hearing shall not be set any sooner than 10 days prior to the hearing date.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1223 (July 2006), amended LR 33:

#### **§4713. Hearings on a Repurchase Demands**

A. Prior to noticing a repurchase demand for hearing, pursuant to R.S. 32:816, 818, 821 or 822, the hearing officer will determine the following:

A.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1223 (July 2006), amended LR 33:

#### **Chapter 48. Designation of Area of Responsibility for Marine Products**

##### **§4801. Procedure of Designation of Area of Responsibility**

A. Beginning August 16, 2004, the commission shall notify by certified mail each marine product manufacturer/distributor, who has prior to that date failed to designate an area of responsibility for each of its existing dealers, that they must designate an area of responsibility for each dealer within 30 days following receipt of the notifications. Failure to respond to the commission within 30 days shall constitute an absence of designation thereby mandating the areas of responsibility provided for in R.S. 32:781(2)(b).

B. ...

C. Thereafter, any marine product manufacturer/distributor which was not licensed with the commission prior to August 16, 2004, shall be notified by the commission by certified mail of their responsibility to designate an area of responsibility for their dealers. Failure to designate an area of responsibility for each dealer within 30 days following receipt of the notification shall constitute an absence of designation thereby mandating the area of responsibility provided for in R.S. 32:817(C).

D. Any changes in the area of responsibility once designated must meet criteria as set forth in R.S. 32:817(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:781 and 817.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:2481 (November 2004), amended LR 33:

##### **§4803. Uniform Procedures to Designate the Territory Assigned to a Marine Dealer**

A. On any occasion in which the marine product manufacturer/distributor has designated, an area of responsibility smaller in size to that provided for in R.S. 32:781(2)(b) the marine product manufacturer and/or distributor must furnish with the designation the uniform procedure to establish the community or territory that is assigned to a marine dealer. If the manufacturer/distributor fails to furnish a uniform procedure with its designation, the commission shall reject the designation and shall so notify the manufacturer/distributor of the rejection by certified mail. With the notice of rejection, the commission shall provide the manufacturer/distributor the opportunity to appeal the rejection to the commission in a hearing at the commission's monthly meeting.

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Nursing**

**Prescriptive and Distributing Authority Clinical Practice  
Requirements for Licensed APRNs or APRNs  
(LAC 46:XLVII.4513)**

The Louisiana State Board of Nursing proposes to amend LAC 46:XLVII. 4513 in accordance with R.S. 37:918, R.S. 37:919 and R.S 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The proposed amendments to LAC 46:XLVII.4513, Authorized Practice, revises the requirements of 500 hours of clinical practice as a licensed APRN or APRN for granting of prescriptive and distributing authority. The proposed amendments require that the applicant shall provide evidence of 500 hours of clinical practice as a licensed APRN or APRN applicant within one year in the clinical specialty for which the applicant was educationally prepared as an APRN immediately prior to applying for prescriptive and distributing authority; practice in another state as a licensed APRN may be accepted to meet this requirement; or 500 hours of clinical practice in medical management of patients in a preceptorship (student experience) in which the APRN applicant is precepted by a physician or another advanced practice registered nurse who has approval for medical management/prescriptive authority by the Board of Nursing. The student experience must occur in a formal board approved educational program preparing graduates to sit for the respective advanced practice specialty licensure exam and certification process.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 45. Advanced Practice Registered Nurses  
§4513. Authorized Practice**

A. - C.8. ...

D. Prescriptive and Distributing Authority. An Advanced Practice Registered Nurse (APRN) shall practice in a manner consistent with the definition of advanced practice set forth in R.S. 37:913(3). An APRN may be granted prescriptive authority to prescribe assessment studies, including pharmaceutical diagnostic testing (e.g., dobutamine stress testing) legend and certain controlled drugs, therapeutic regimens, medical devices and appliances, receiving and distributing a therapeutic regimen of prepackaged drugs prepared and labeled by a licensed pharmacist, and free samples supplied by a drug manufacturer, and distributing drugs for administration to and use by other individuals within the scope of practice as defined by the board in R.S. 37.913(3)(b).

1. The applicant shall:

a. hold a current, unencumbered, unrestricted and valid registered nurse license in Louisiana with no pending disciplinary proceedings as stated in R.S. 37:921;

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:781 and 817.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2482 (November 2004), amended LR 33:

**Family Impact Statement**

The proposed Rules of the Louisiana Recreational and Used Motor Vehicle Commission should not have any known or foreseeable impact on any family as defined by R.S. 49:972D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. 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 June 10, 2007 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: Recreational and Used Motor Vehicles**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will have no impact on costs(savings) to state or local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will result in additional applications for licensure submitted to the Recreational and Used Motor Vehicle Commission in order for licensee to continue to operate at the previous level. The total number of licenses available will increase from five to ten with the implementation of this rule. The cost of each license will be \$200. The total increase in revenue is indeterminable and will be dependent upon the applications for licensure received.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will require applicants to pay \$200 per license for the maximum number of licenses offered. The total amount of additional costs to licensees is indeterminable as the number of licences per applicant is unknown.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change will not effect competition and employment.

John M. Torrance  
Executive Director  
0705#071

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

b. hold a current, unencumbered, unrestricted and valid APRN license;

c. submit a notarized application on a form provided by the board with a non-refundable fee as set forth in LAC 46:XLVII.3341;

d. provide evidence of:

i. 500 hours of clinical practice as a licensed APRN or APRN applicant within one year in the clinical specialty for which the applicant was educationally prepared as an APRN immediately prior to applying for prescriptive and distributing authority; practice in another state as a licensed APRN may be accepted to meet this requirement; or

ii. 500 hours of clinical practice in medical management of patients in a preceptorship (student experience) in which the APRN applicant is precepted by a physician or another advanced practice registered nurse who has approval for medical management/prescriptive authority by the Board of Nursing. The student experience must occur in a formal board approved educational program preparing graduates to sit for the respective advanced practice specialty licensure exam and certification process; and

iii. successful completion of a minimum of 45 contact hours of education (3 credit hour academic course) in advanced pharmacotherapeutics obtained as a component of a formal educational program preparing registered nurses for advanced practice, approved by the board;

iv. successful completion of a minimum of 45 contact hours (3 credit hour academic course) in physiology/pathophysiology in a formal educational program approved by the board for preparation for advanced practice registered nurses;

v. any deviation from Clause 1.d.i, ii or iii shall be submitted to the board for review and approval; and

vi. a collaborative practice agreement as defined in §4513.B.1, 2 and 3, with one or more licensed collaborating physicians which shall include, but not be limited to:

(a) a plan of accountability among the parties that:

(i) defines the prescriptive authority of the APRN and the responsibilities of the collaborating physician or physicians;

(ii) delineates a plan for hospital and other healthcare institution admissions and privileges which includes a statement that the collaborating physician must have said privileges at the same institution before an APRN can receive this determination at said institution;

(iii) delineates mechanisms and arrangements for diagnostic and laboratory requests for testing; and

(iv) delineates a plan for documentation of medical records;

(b) clinical practice guidelines as required by R.S. 37:913(9)(b) shall contain documentation of the types or categories or schedules of drugs available and generic substitution for prescription and be in accordance with current standards of care and evidence-based practice for the APRN specialty and functional role and be:

(i) mutually agreed upon by the APRN and collaborating physician;

- (ii). specific to the practice setting;
- (iii). maintained on site; and
- (iv). reviewed and signed at least annually by the APRN and physician to reflect current practice;

(c). documentation of the availability of the collaborating physician when the physician is not physically present in the practice setting. Physicians shall be available to provide consultation as needed:

(i). physician shall be available by telephone or direct telecommunications for consultation, assistance with medical emergencies, or patient referral, as delineated in the collaborative practice agreement; and

(ii). the secondary (back-up) physician or physicians shall be in good standing and approved by the Louisiana State Board of Medical Examiners and sign the collaborative practice agreement;

(iii). in the event the collaborating physician and any secondary (back-up) collaborating physician(s) are unavailable, the APRN will not prescribe;

(d). documentation shall be shown that patients are informed about how to access care when both the APRN and/or the collaborating physicians are absent from the practice setting; and

(e). an acknowledgement of the mutual obligation and responsibility of the APRN and collaborating physician to insure that all acts of prescriptive authority are properly documented.

2. - 14.b. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:918(K), and R.S. 37:1031-1034.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 10:598 (August 1984), amended by the Department of Health and Hospitals, Board of Nursing, LR 22:283 (April 1996), amended by the Department of Health and Hospitals, Board of Nursing and Board of Medical Examiners, LR 22:981 (October 1996), LR 25:1245 (July 1999), LR), amended by the Department of Health and Hospitals, Board of Nursing, 27:727 (May 2001), amended by the Department of Health and Hospitals, Board of Nursing and Board of Medical Examiners, LR 28:487 (March 2002) repromulgated LR 28:1205 (June 2002), amended by the Department of Health and Hospitals, Board of Nursing, LR 31:2023 (August 2005), amended LR 33:

**Family Impact Statement**

In compliance with R.S. 49:953 and 974, the following Family Impact Statement of the proposed amendments to rules is provided. There should be no adverse effect on the stability of the family; the authority and rights of parents regarding the education and supervision of their children; or the ability of the family or a local government to perform the function as contained in the proposed rule amendments.

Interested persons may submit written comments on the proposed Rule until 5 p.m., June 10, 2007, to Barbara L. Morvant, Executive Director, 5207 Essen Lane, Suite 6, Baton Rouge, LA, 70809.

Barbara L. Morvant  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Prescriptive and Distributing  
Authority Clinical Practice Requirements  
for Licensed APRNs or APRNs**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There is no anticipated increase in expenditures or savings due to these proposed rules except for the publication of the proposed rules estimated at \$300 in FY 06-07.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed amendments to Rule LAC 46:XLVII. §4513. Authorized Practice revises the requirements of 500 hours of clinical practice as a licensed APRN or APRN for granting of prescriptive and distributing authority. The proposed amendments require that the applicant shall provide evidence of 500 hours of clinical practice as a licensed APRN or APRN applicant within one year in the clinical specialty for which the applicant was educationally prepared as an APRN immediately prior to applying for prescriptive and distributing authority; practice in another state as a licensed APRN may be accepted to meet this requirement; or 500 hours of clinical practice in medical management of patients in a preceptorship (student experience) in which the APRN applicant is precepted by a physician or another advanced practice registered nurse who has approved for medical management/prescriptive authority by the Board of Nursing. The student experience must occur in a formal Board approved educational program preparing graduates to sit for the respective advanced practice specialty licensure exam and certification process.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no estimated effect on competition and employment. This change will allow Advanced Practice Registered Nurses (APRNs) to enter full practice more quickly, as the proposed rule allows APRNs (approximately 200 per year) to accumulate the 500 hours during training.

Barbara L. Morvant, M.N., R.N.  
Executive Director  
0705#072

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Nursing Facilities—Reimbursement Methodology  
Fair Rental Value, Property Tax and Property Insurance  
Payments (LAC 50:VII.1312)

Editor's Note: The following Notice of Intent is being repromulgated due to an error upon submission. The original Notice of Intent may be viewed in the April 20, 2007 edition of the *Louisiana Register* on pages 718-719.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt §1312 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities to: 1) incorporate new definitions and revise current definitions; 2) provide clarifications on cost report submissions; and 3) adopt provisions governing verification of minimum data set assessments (MDS) and the appeal process for dispute of MDS review findings (*Louisiana Register*, Volume 28, Number 12). The bureau amended the December 20, 2005 Rule to revise the provisions governing emergency preparedness requirements for nursing facilities (*Louisiana Register*, Volume 32, Number 12). The department now proposes to amend the provisions governing the reimbursement methodology for nursing facilities to allow for additional payments for fair rental value, property tax and property insurance when a Medicaid participating nursing facility purchases and closes an existing Medicaid participating nursing facility.

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

#### **Title 50**

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

#### **Part VII. Long Term Care Services**

##### **Subpart 1. Nursing Facilities**

#### **Chapter 13. Reimbursement Methodology**

### **§1312. Additional Fair Rental Value, Property Tax and Property Insurance Payments**

A. On or after July 20, 2007, a Louisiana Medicaid participating nursing facility, buyer(s), that purchases and closes an existing Louisiana Medicaid participating nursing facility (seller) will be eligible to receive additional fair rental value, property tax and property insurance payments for five years after the legal transfer of ownership and closure of the seller's nursing facility.

B. Qualifying Buyer(s). In order for the buying facility to qualify for the additional payments in §1312.C, the following conditions must be met.

1. The buyer(s) must close the purchased nursing facility (seller) within 90 days after the legal transfer of ownership.

2. After closing the facility, all buyers must permanently surrender their interest in the seller's bed license and the Facility Need Review bed approvals to the state.

3. The buyer(s) must be a certified nursing facility at the time of purchase and continue their Medicaid participation throughout the entire five year payment period.

a. A change in ownership of a buyer facility will not be considered a break in Medicaid participation provided that the new owner of the nursing facility continues to

participate in the Medicaid Program as a certified nursing facility.

4. The buyer(s) must provide the following information in writing to the department within 30 days after the legal transfer of ownership:

- a. a list of all buyers;
- b. a list of all sellers;
- c. the date of the legal transfer of ownership; and
- d. each buyer's percentage share of the purchased facility.

5. The buyer(s) must provide the following information in writing to the department within 110 days after the legal transfer of ownership:

a. a list of the nursing facility residents that transferred from the seller facility and were residents of the buyer facility as of 90 days after the legal transfer of ownership date; and

b. the date that the seller's facility was officially closed and no longer operating as a nursing facility.

C. The buyer's Medicaid payment determinations will be as follows.

1. Buyer's Additional Fair Rental Value Payments. Each buyer's additional fair rental value payment will be calculated as the seller's annual Medicaid fair rental value payment multiplied by each buyer's reported percentage share in the purchase of the seller. The seller's annual Medicaid fair rental value payment will be calculated as the seller's most recent fair rental value per diem as determined under §1305.D.3.b.iii multiplied by the total Medicaid days reported on the seller's most recent base year cost report as determined in §1305.B.

2. Buyer's Additional Property Tax and Insurance Payments. Each buyer's additional property tax and insurance payment will be calculated as the seller's annual Medicaid property tax and insurance payment multiplied by each buyer's reported percentage share in the purchase of the seller. The seller's annual Medicaid property tax and insurance pass-through payment will be calculated as the seller's most recent property tax and insurance per diem as determined under §1305.D.4.a multiplied by the total Medicaid days reported on the seller's most recent base year cost report as determined in §1305.B.

3. Re-Base of Buyers' Fair Rental Value, Property Tax, and Property Insurance per Diems. All buyers will have their fair rental value, property tax, and property insurance per diems re-based using the number of residents reported by each buyer under §1312.B.5.a. The calculation will be as follow.

a. The number of total resident days used in the calculation of each buyer's current fair rental value per diem under §1305.D.3.b.iii will be increased by the number of residents the buyer reported under §1312.B.5.a multiplied by the number of current calendar year days.

b. The number of total resident days used in the calculation of each buyer's current pass through property tax and insurance per diem under §1305.D.4.a will be increased by the number of residents the buyer reported under §1312.B.5.a multiplied by the number of calendar days included in the buyer's most recent base-year cost report.

c. The resident day adjustment to each buyer's fair rental value, property tax, and property insurance per diem will continue until the buyer's base-year cost report, as

defined under §1305.B, includes a full 12 months of resident day data following the closure of the acquired facility (seller). If a buyer's base year cost report overlaps the closure date of the acquired facility, a proportional adjustment to that buyer's resident days will be made for use in the fair rental value, property tax, and property insurance per diem calculations.

D. Payments. The additional fair rental value, property tax, and property insurance payments will be paid to the buyer(s) in equal quarterly installments for five years (20 quarters) effective the calendar quarter that the seller's facility is closed and the seller's licensed beds are surrendered to the department.

1. The revised fair rental value per diem and revised property tax and insurance per diem for the buyer(s) will be effective the first day of the month following the closure of the acquired facility (seller).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, May 29, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Nursing Facilities—Reimbursement Methodology Fair Rental Value, Property Tax and Property Insurance Payments

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$272 for FY 06-07, \$218,705 for FY 07-08, and \$218,705 for FY 08-09. It is anticipated that \$544 (\$272 SGF and \$272 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule. The cost to the state during the first five years may be less than estimated depending on the distribution of the patients following the closure of the selling facility. After the fifth year the state should realize a savings by the reduction of beds of the selling facility and this saving would be equal to the annual cost of the Fair Rental Value and the Property Tax and Insurance cost of the selling facility.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$272 for FY 06-07, \$556,295 for FY 07-08, and \$556,295 for FY 08-09. It is anticipated that \$272 will be expended in FY 06-07 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to amend the provisions governing the reimbursement methodology for nursing facilities to allow for an additional fair rental value payment when a Medicaid participating nursing facility purchases and closes an existing Medicaid participating nursing facility (5 facilities are expected to participate). It is anticipated that implementation of this proposed rule will increase program expenditures for nursing facilities by approximately \$775,000 for FY 07-08 and \$775,000 for FY 08-09.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will promote quality care and increase efficiency and encourage nursing homes to operate at an occupancy level of ninety-five percent.

Jerry Phillips  
Medicaid Director  
0705#098

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

#### Nursing Facilities—Reimbursement Methodology Private Room Conversions (LAC 50:VII.1310)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt §1310 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities to: 1) incorporate new definitions and revise current definitions; 2) provide clarifications on cost report submissions; and 3) adopt provisions governing verification of minimum data set assessments (MDS) and the appeal process for dispute of MDS review findings (*Louisiana Register*, Volume 28, Number 12). The bureau amended the December 20, 2005 Rule to revise the provisions governing emergency preparedness requirements for nursing facilities (*Louisiana Register*, Volume 32, Number 12). The department now proposes to amend the provisions governing the reimbursement methodology for nursing facilities to allow for additional payments for private room conversions when a Medicaid participating nursing facility converts one or more semi-private rooms to private rooms for occupancy by Medicaid recipients.

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

## **Title 50**

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

#### **Part VII. Long Term Care Services**

##### **Subpart 1. Nursing Facilities**

#### **Chapter 13. Reimbursement Methodology**

#### **§1310. Additional Payments and Square Footage**

##### **Adjustments for Private Room Conversion**

A. Effective for dates of service on or after September 1, 2007, Medicaid participating nursing facilities that convert a semi-private room to a Medicaid-occupied private room are eligible to receive an additional \$5 per diem payment. Facilities that participate will have their fair rental value per diem revised based on the change in licensed beds.

##### **B. Qualifying Facilities**

1. In order for a nursing facility's beds to qualify for an additional \$5 per diem payment, a revised fair rental value (FRV), a revised property tax pass-through, and revised property insurance pass-through, all of the following conditions must be met.

a. The nursing facility must convert one or more semi-private rooms to private rooms on or after September 1, 2007.

b. The converted private room(s) must be occupied by a Medicaid resident(s) to receive the \$5 per diem payment.

c. The nursing facility must surrender their bed licenses equal to the number of converted private rooms.

d. The nursing facility must submit the following information to the department within 30 days of the private room conversion:

- i. the number of rooms converted from semi-private to private;
- ii. the revised bed license;
- iii. a resident listing by payer type for the converted private rooms; and
- iv. the date of the conversions.

C. The additional \$5 per diem payment determination will be as follows.

1. An additional \$5 will be added to the nursing facility's case-mix rate for each Medicaid resident day in a converted private room.

2. The payment will begin the first day of the following calendar quarter, after the facility meets all of the qualifying criteria in §1310.B.1.

3. A change in ownership, major renovation, or replacement facility will not impact the \$5 additional per diem payment provided that all other provisions of this Section have been met.

D. The revised fair rental value per diem will be calculated as follows.

1. After a qualifying conversion of semi-private rooms to private rooms, the nursing facility's square footage

will be divided by the remaining licensed nursing facility beds to calculate a revised square footage per bed.

2. After a qualifying private room conversion, the allowable square footage per bed used in §1305.D.3.b. will be determined as follows.

a. No Change in Total Square Footage. The total allowable square footage after a qualifying private room conversion will be equal to the total allowable square footage immediately prior to the conversion, provided no other facility renovations or alterations changing total square footage occur concurrently or subsequently to the private room conversion.

b. Square Footage Changes to Existing Buildings. If a change in total nursing square footage occurs in a building existing on the effective date of this rule and that change is concurrent or subsequent to a private room conversion, the allowable square footage will be determined in accordance with §1305.D.3.b.i as if the private room conversion did not occur.

c. Square Footage Changes Due to New Buildings. Replacement buildings constructed or first occupied after the effective date of this rule will have their allowable square footage calculated in accordance with §1305.D.3.b.i.

3. Resident days used in the fair rental value per diem calculation will be the greater of the annualized actual resident days from the base year cost report or 70 percent of the revised annual bed days available after the change in licensed beds.

4. A revised fair rental value per diem will be calculated under §1305.D.3.b. using the allowable square footage according to §1310.D.2, remaining licensed beds, and the revised minimum occupancy calculation.

5. The revised fair rental value per diem will be effective the first of the following calendar quarter, after the facility meets all qualifying criteria in paragraph §1310.B.1.

##### **E. Reporting**

1. To remain eligible for the conversion payments and the allowable square footage calculations, facilities must report Medicaid-occupied private rooms with every annual cost report.

2. The department may also require an alternate billing procedure for providers to receive the additional \$5 private room rate.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, June 26, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that



time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Nursing Facilities  
Reimbursement Methodology  
Private Room Conversions**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
It is anticipated that the implementation of this proposed rule will result in an estimated cost to the state of \$2,295,317 for FY 07-08 and \$2,837,012 for FY 08-09. It is anticipated that \$408 (\$204 SGF and \$204 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$5,838,336 for FY 07-08 and \$7,216,183 for FY 08-09. It is anticipated that \$204 will be expended in FY 06-07 for the federal administrative expenses for promulgation of this proposed rule and the final rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
This rule proposes to amend the provisions governing the reimbursement methodology for nursing facilities to allow for additional payments for private room conversions when a Medicaid participating nursing facility converts one or more semi-private rooms to private rooms for occupancy by Medicaid recipients. It is anticipated that implementation of this proposed rule will increase program expenditures for nursing facilities by approximately \$8,133,653 for FY 07-08 and \$10,053,195 for FY 08-09.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
It is anticipated that the implementation of this rule will have no effect on competition and employment.

Jerry Phillips  
Medicaid Director  
0705#099

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary  
Office for Citizens with Developmental Disabilities**

Home and Community-Based Services Waivers  
New Opportunities Waiver  
Service Cap Increase and Clarification of Services  
(LAC 50:XXI.13701 and Chapters 139-143)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.13701 and Chapters 139-143 under the Medical Assistance Program as

authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services implemented a new home and community based services waiver, the New Opportunities Waiver (NOW) designed to enhance the support services available to individuals with developmental disabilities (*Louisiana Register*, Volume 30, Number 6). The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amended the June 20, 2004 Rule to remove the requirement that direct support staff providing Individual and Family Supports-Night services be awake and alert and replace it with language that would allow the direct support staff to sleep under certain conditions and to allow the billing of two one-way trips per day in lieu of one round trip per day under the Transportation for Day Habilitation and Supported Employment Models (*Louisiana Register*, Volume 32, Number 11). The department now proposes to amend the provisions governing the New Opportunities Waiver to increase the service caps for designated services and redefine the services available through the waiver in order to more adequately address the current needs of waiver recipients.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that the implementation of this proposed Rule will have a positive effect on family functioning, stability or autonomy as described in R.S. 49:972 as it will allow more flexibility and utilization of services for recipients in the New Opportunities Waiver.

**Title 50  
PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part XXI. Home and Community Based Services  
Waivers**

**Subpart 11. New Opportunities Waiver  
Chapter 137. General Provisions  
§13701. Introduction**

- A. ...
- B. All NOW services are accessed through the case management agency of the recipient's choice. All services must be prior authorized and delivered in accordance with the approved comprehensive plan of care (CPOC). The CPOC shall be developed using a person-centered process coordinated by the individual's case manager.
- C. Providers must maintain adequate documentation to support service delivery and compliance with the approved plan of care and will provide said documentation at the request of the department.
- D. - F. ...
- G. Providers shall follow the regulations and requirements as specified in the NOW provider manual.
- H. Home and community-based services shall not be reimbursed while the recipient is a patient in an inpatient facility.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1201 (June 2004),

amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

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

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

1. ...

a. Additional hours of IFS day services beyond the 16 hours can be approved based on documented need, which can include medical or behavioral and specified in the approved CPOC.

2. - 2.e. ...

B. IFS services may be shared by up to three waiver recipients who may or may not live together and who have a common direct service provider agency. Waiver recipients may share IFS services staff when agreed to by the recipients and health and welfare can be assured for each individual. The decision to share staff must be reflected on the CPOC and based on an individual-by-individual determination. Reimbursement rates are adjusted accordingly. Shared IFS services, hereafter referred to as shared support services, may be either day or night services.

C. - C.5. ...

6. accompanying the recipient to the hospital and remaining until admission or a responsible representative arrives, whichever occurs first. IFS services may resume at the time of discharge.

D. - D.1. ...

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

D.3. - E.2. ...

3. An IFS-D or N worker shall not work more than 16 hours in a 24-hour period unless there is a documented emergency or a time-limited non-routine need that is documented in the approved CPOC. An IFS-D or N shared supports worker shall not work more than 16 hours in a 24-hour period unless there is a documented emergency or a time-limited non-routine need that is documented in the approved CPOC.

F. ...

1. IFS services shall be provided in the state of Louisiana. IFS services may be performed outside the state for a time-limited period or for emergencies. The provision of services outside of the state must be approved by the department.

2. ...

3. The provision of IFS services in licensed congregated settings shall be excluded from coverage.

G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1202 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:2063 (November 2006), LR 33:

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

A. Center-Based Respite (CBR) Care is temporary, short-term care provided to a recipient with developmental disabilities who requires support and/or supervision in his/her day-to-day life due to the absence or relief of the primary caregiver. While receiving center-based respite care, the recipient's routine is maintained in order to attend school, work or other community activities/outings. The respite center is responsible for providing transportation for community outings, as that is included as part of their reimbursement. Individual and family support services (both day and night) will not be reimbursed while the recipient is in a center-based respite facility.

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1203 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

A. Community Integration Development (CID) facilitates the development of opportunities to assist recipients in becoming involved in their community through the creation of natural supports. The purpose of CID is to encourage and foster the development of meaningful relationships in the community reflecting the recipient's choices and values. Objectives outlined in the Comprehensive Plan of Care will afford opportunities to increase community inclusion, participation in leisure/recreational activities, and encourage participation in volunteer and civic activities. Reimbursement for this service includes the development of a service plan. To utilize this service, the recipient may or may not be present as identified in the approved CID service plan. CID services may be performed by shared staff for up to three waiver recipients who have a common direct service provider agency. The shared staff shall be reflected on the CPOC and based on an individual-by-individual determination. Rates shall be adjusted accordingly.

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1203 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

A. - B. ...

C. Exclusions

1. Legally responsible relatives may not be SIL providers. Payment for SIL does not include payments made

directly or indirectly to members of the individual's immediate family.

2.a. - c. ...

d. routine care and supervision which could be expected to be provided by a family member; or

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

f. Repealed.

D. ...

E. Provider Qualifications. The provider must possess a current, valid license for the Supervised Independent Living module.

F. - F.2. ...

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1204 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

### **§13913. Supported Employment**

A. - D.1. ...

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

D.3. - F.3. ...

G. Licensing Requirements. The provider must possess a valid certificate of compliance as a Community Rehabilitation Provider (CRP) from Louisiana Rehabilitation Services.

1. Existing providers of supported employment services shall be allowed 12 months after the effective date of the final Rule to comply with the licensing and accreditation requirements.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1205 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

### **§13917. Employment-Related Training**

A. Employment-related training consists of paid employment for recipients for whom competitive employment at or above the minimum wage is unlikely, and who need intensive ongoing support to perform in a work setting because of their disabilities. Services are aimed at providing recipients with opportunities for employment and related training in work environments one to eight hours a day, one to five days a week at a commensurate wage in accordance with United States Department of Labor regulations and guidelines. Employment-related training services include training designed to improve and maintain the recipient's capacity to perform productive work and to function adaptively in the work environment. The recipient must be 18 years or older in order to receive employment-

related training services. Reimbursement for these services includes transportation and requires an individualized service plan.

B. - D. ...

E. Licensing Requirements. The provider must possess a current, valid license as an adult day care center and a valid certificate of compliance as a Community Rehabilitation Provider (CRP) from Louisiana Rehabilitation Services.

1. Existing providers of employment-related training services shall be allowed 12 months after the effective date of the final Rule to comply with the licensing requirements.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1205 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

A. - C. ...

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

2. Upon completion of the work and prior to payment, the provider shall give the recipient a certificate of warranty for all labor and installation and all warranty certificates from manufacturers.

3. - 5. ...

6. Excluded are those vehicle adaptations which are of general utility or for maintenance of the vehicle or repairs to adaptations. Car seats are not considered a vehicle adaptation.

D. Service Limits. There is a cap of \$7,000 per recipient for environmental accessibility adaptations. Once a recipient reaches 90 percent or greater of the cap and the account has been dormant for three years, the recipient may access another \$7,000. Any additional environmental accessibility expenditures during the dormant period reset the three-year time frame. On a case-by-case basis, with supporting documentation and based on need, an individual may be able to exceed this cap with the approved CPOC and if they have the requested funds available in Specialized Medical Equipment and Supplies service cap. An individual may access up to the available maximum in the service cap for Specialized Equipment and Supplies.

E. Provider Qualifications. The provider must be an enrolled Medicaid provider and comply with applicable state and local laws governing licensure and/or certification.

1. All providers of environmental accessibility adaptations must be registered through the Louisiana State Licensing Board for Contractors as a home improvement contractor, with the exception of providers of vehicle adaptations.

2. Providers of environmental accessibility adaptations to vehicles must be licensed by the Louisiana Motor Vehicle Commission as a specialty vehicle dealer and accredited by the National Mobility Equipment Dealers Association under the Structural Vehicle Modifier category.

3. Existing providers of environmental accessibility adaptations to vehicles shall be allowed 12 months after the effective date of the final Rule to comply with the licensing and accreditation requirements of §13919.E.2.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1206 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

A. - D. ...

E. Service Limitations. There is a cap of \$1,000 per individual for specialized equipment and supplies. Once a recipient reaches 90 percent or greater of the cap and the account has been dormant for three years, the recipient may access another \$1,000. Any additional specialized equipment and supplies expenditures during the dormant period reset the three-year time frame. On a case-by-case basis, with supporting documentation and based on need, an individual may be able to exceed this cap with the approved CPOC and if they have the requested funds available in Environmental Accessibility Adaptations. An individual may access up to the available maximum in the service cap for Environmental Accessibility Adaptations.

F. Provider Qualifications. All agencies who are vendors of technological equipment and supplies must be enrolled in the Medicaid Program as a durable medical equipment provider and must meet all applicable vendor standards and requirements for manufacturing, design and installation of technological equipment and supplies.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1207 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

A. - B. ...

1. have a demonstrated need for quick emergency back-up;

2. are unable to use other communication systems as they are not adequate to summon emergency assistance; or

3. do not have 24 hour direct supervision.

4. - 5. Repealed.

C. - D. ...

E. Provider Qualifications. The provider must be an enrolled Medicaid provider of the Personal Emergency Response System. The provider shall install and support PERS equipment in compliance with all applicable federal, state, parish and local laws and meet manufacturer's specifications, response requirements, maintenance records and recipient education.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1207 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

Editor's Note: §13925, Professional Consultation, has been repealed and new text has been inserted into §13925.

### **§13925. Professional Services**

A. Professional services are services designed to increase the individual's independence, participation and productivity in the home, work and community. Recipients, up to the age of 21, who participate in NOW must access these services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Professional services may only be furnished and reimbursed through NOW when the services are not covered under the Medicaid State Plan. Professional services must be delivered with the recipient present and be provided based on the approved CPOC and an individualized service plan. Service intensity, frequency and duration will be determined by individual need. Professional services may be utilized to:

1. perform assessments and/or re-assessments and recommendations;

2. provide consultative services and recommendations;

3. provide training or therapy to an individual and/or their natural and formal supports necessary to either develop critical skills that may be self-managed by the individual or maintained according to the individual's needs;

4. intervene in and stabilize a crisis situation, behavioral or medical, that could result in the loss of home and community-based services; or

5. provide necessary information to the individual, family, caregivers and/or team to assist in the implementation of plans according to the approved CPOC.

B. Professional Services are limited to the following services.

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

2. Social work services are highly specialized direct counseling services furnished by a licensed clinical social worker and designed to meet the unique counseling needs of individuals with mental retardation and development disabilities. Counseling may address areas such as human sexuality, depression, anxiety disorders, and social skills. Services must only address those personnel outcomes and goals listed in the approved CPOC.

3. Nutritional/Dietary services are medically necessary direct services provided by a licensed registered dietician or licensed nutritionist. Services must be ordered by a physician. Direct services may address health care and nutritional needs related to prevention and primary care activities, treatment and diet. Reimbursement is only available for the direct service performed by a dietitian or

nutritionist, and not for the supervision of a dietician or nutritionist performing the hands-on direct service.

C. Service Limits. There shall be a \$2,250 cap per recipient per CPOC year for the combined range of professional services in the same day but not at the same time.

D. Provider Qualifications. The provider of professional services must be a Medicaid enrolled provider. Each professional must possess a current valid Louisiana license to practice in his/her field and have at least one year of experience post licensure in their area of expertise.

E. Non-Reimbursable Activities. The following activities are not reimbursable:

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1207 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

#### **§13927. Skilled Nursing Services**

A. Skilled Nursing services are medically necessary nursing services ordered by a physician and provided by a licensed registered nurse or a licensed practical nurse. Skilled nursing services shall be provided by a licensed, enrolled home health agency and require an individual nursing service plan. These services must be included in the individual's approved CPOC. All Medicaid State Plan services must be utilized before accessing this service. Recipients, up to the age of 21, must access these services as outlined on their CPOC through the Home Health Program.

B. When there is more than one recipient in the home receiving skilled nursing services, services may be shared and payment must be coordinated with the service authorization system and each recipient's approved CPOC. Nursing consultations are offered on an individual basis only.

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

D. - D.6. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1208 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

#### **§13929. One Time Transitional Expenses**

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

B. Allowable transitional expenses include:

1. the purchase of essential furnishings such as:
  - a. bedroom and living room furniture;

- b. table and chairs;
- c. window blinds;
- d. eating utensils; and
- e. food preparation items;

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

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

4. nonrefundable security deposits.

5. - 9. Repealed.

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1208 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), repealed by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), repealed by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

#### **§13935. Consumer Directed Service**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), repealed by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

### **Chapter 141. Self-Direction Initiative**

#### **§14101. Self-Direction Service Option**

A. The self-direction initiative is a voluntary, self-determination option which allows the recipient to coordinate the delivery of designated NOW services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option

requires that the recipient utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

1. - 10. Repealed.

B. Recipient Responsibilities. Waiver recipients choosing the self-directed services option must understand the rights, risks and responsibilities of managing their own care and individual budget. If the recipient is unable to make decisions independently, he must have an authorized representative who understands the rights, risks and responsibilities of managing his care and supports within his individual budget. Responsibilities of the recipient or authorized representative include:

1. completion of mandatory trainings, including the rights and responsibilities of managing their own services and supports and individual budget;

2. participation in the self-direction service option without a lapse in or decline in quality of care or an increased risk to health and welfare, and:

a. adhere to the health and welfare safeguards identified by the team, including the application of a comprehensive monitoring strategy and risk assessment and management systems;

3. participation in the development and management of the approved Personal Purchasing Plan:

a. this annual budget is determined by the recommended service hours listed in the recipient's CPOC to meet his needs;

b. the recipient's individual budget includes a potential amount of dollars within which the recipient or his authorized representative exercises decision-making responsibility concerning the selection of services and service providers.

C. Termination of the Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the CPOC, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary Termination. The waiver recipient may chose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service option for a recipient and require him to receive provider-managed services under the following circumstances:

a. the health or welfare of the recipient is compromised by continued participation in the self-directed option;

b. the recipient is no longer able to direct his own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the recipient or the authorized representative; or

d. over three consecutive payment cycles, the recipient or authorized representative:

i. places barriers to the payment of the salaries and related state and federal payroll taxes of direct support staff;

ii. fails to follow the Personal Purchasing Plan;

iii. fails to provide required documentation of expenditures and related items; or

iv. fails to cooperate with the fiscal agent or support coordinator in preparing any additional documentation of expenditures.

3. Repealed.

D. - E.1. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

## **Chapter 143. Reimbursement**

### **§14301. Reimbursement Methodology**

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

1. Center-Based Respite;

2. Community Integration Development:

a. services furnished to two recipients who choose to share supports will be reimbursed at 75 percent of the full rate for each recipient;

b. services furnished to three recipients who choose to share supports will be reimbursed at 66 percent of the full rate for each recipient;

3. Day Habilitation;

4. Employment Related Training;

5. Individualized and Family Support-Day and Night:

a. services furnished to two recipients who choose to share supports will be reimbursed at 75 percent of the full rate for each recipient;

b. services furnished to three recipients who choose to share supports will be reimbursed at 66 percent of the full rate for each recipient;

6. Professional Services;

7. Skilled Nursing Services, and:

a. services furnished to two recipients who choose to share supports will be reimbursed at 75 percent of the full rate for each recipient;

b. services furnished to three recipients who choose to share supports will be reimbursed at 66 percent of the full rate for each recipient;

c. nursing consultations are offered on an individual basis only;

8. Supported Employment, One-to-One Intensive and Mobile Crew/Enclave.

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

1. environmental accessibility adaptations;

2. specialized medical equipment and supplies; and

3. transitional expenses.

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

1. substitute family care;

2. residential habitation-supported independent living; and

3. supported employment-follow along.

D. Maintenance of the personal emergency response system is paid through a monthly rate.

E. Installation of the personal emergency response system is paid through a one time fixed cost.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, June 26, 2007 at 9:30 a.m. in Room 188, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Home and Community-Based Services  
Waivers—New Opportunities Waiver  
Service Cap Increase and Clarification of Services**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$2,040 for FY 06-07, \$1,857,379 for FY 07-08, and \$2,228,855 for FY 08-09. It is anticipated that \$4,080 (\$2,040 SGF and \$2,040 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$2,040 for FY 06-07, \$4,724,404 for FY 07-08, and \$5,669,285 for FY 08-09. It is anticipated that \$2,040 will be expended in FY 06-07 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

This rule proposes to amend the provisions governing the New Opportunities Waiver to redefine the services available through the waiver in order to more adequately address the current needs of waiver recipients by increasing service CAP amounts for approximately 2,600 exiting recipients. It is anticipated that implementation of this proposed rule will increase program expenditures for the New Opportunities Waiver by approximately \$6,581,783 for FY 07-08 and \$7,898,140 for FY 08-09.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

This rule will have no known effect on competition and employment.

Jerry Phillips  
Medicaid Director  
0705#100

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

**Regulation 81—Military Personnel—Automobile  
Liability Insurance Premium Discount  
and Insurer Premium Tax Credit Program  
(LAC 37:XIII.9511 and 9519)**

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 Louisiana Department of Insurance ("LDOI") gives notice that rulemaking procedures have been initiated to amend the "Louisiana Application for Military Discount" form that acts as the documentary proof required for a person to verify eligibility for the discount. The amended form would still require the name of the insured's unit commander for verification purposes, but would no longer require the signature of the unit commander.

Pursuant to R.S. 49:953.A.(1)(a)(vii) the Commissioner for the LDOI states that he has prepared a preamble that explains the basis and rationale for the amendment to Regulation 81 and summarizes the information and data supporting the amendment to Regulation 81. To facilitate public access to this preamble the commissioner hereby restates the preamble herein, to wit: The amendment to Regulation 81 is taken 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., and pursuant to R.S. 49:953.A.(1)(a). The LDOI amends Regulation 81 to implement changes to the Military Personnel Automobile Liability Insurance Premium Discount and Insurer Premium Tax Credit Program that automobile insurance carriers are required under R.S. 22:1425 to provide to active military personnel based in Louisiana. Regulation 81 provided an application form for active military personnel based in Louisiana that acts as the documentary proof required for a person to verify eligibility for the discount. The amended form would still require the name of the insured's unit commander for verification purposes, but would no longer require the signature of the unit commander. Thus, in furtherance of the amended requirements of R.S. 49:953.A.(1)(a) the commissioner intends to amend Regulation 81 to implement a new form that will no longer require the signature of the unit commander to clarify the documentary evidence that active military personnel are required to provide to the insurance carrier to demonstrate eligibility for the discount as well as the record retention requirements of the insurance carrier to facilitate any subsequent investigation and compliance audit by the LDOI of the military discount program.

A copy of the amendment to Regulation 81 may be obtained from the LDOI by contacting Walter Corey, Attorney, in writing c/o the Louisiana Department of Insurance, 1702 N. Third Street, Baton Rouge, LA 70802, or by telephone at (225)219-0605, or by electronic e-mail at wcorey@ldi.state.la.us.

**Title 37**  
**INSURANCE**  
**Part XIII. Regulations**  
**Chapter 95. Regulation 81—Military Personnel**  
**Automobile Liability Insurance Premium Discount and Insurer Premium Tax Credit Program**

**§9511. Premium Discount; Proof of Eligibility**

A. - D. ...

E. The initial Louisiana Application for Military Discount shall be properly executed by the applicant/AMP and delivered to the insurer. The insurer is required to maintain the original and all subsequent renewals on file for inspection, verification and audit by the LDOI to ensure that the applicant/AMP is entitled to the premium discount mandated by R.S. 22:1425.A.

F. - F.3. ...

G. If single or married AMP are deployed out-of-state or overseas, the insurer is authorized to accept the "Louisiana Application for Military Discount" if it is properly filled out by any one of the persons who is in a filial relationship to the AMP, to wit: spouse, mother, or father, or any brother, sister, aunt or uncle who has attained the age of majority.

H. - J. ...

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 22:3 and LSA-R.S. 22:1425.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:673 (March 2005), amended LR 32:94 (January 2006), LR 33:

**§9519. Louisiana Application for Military Discount—Appendix**

**LOUISIANA APPLICATION FOR MILITARY DISCOUNT**

\_\_\_\_\_  
Name of Insurance Company                      Policy No. or Application No.

READ THIS DOCUMENT CAREFULLY BEFORE SIGNING. If you have any questions about this "Louisiana Application for Military Discount" form ask your agent for an explanation or contact the Louisiana Department of Insurance at (800) 259-5300 or (225) 342-5900.

You must complete all sections on this form. If the spouse or dependent sections are not applicable, you must check the N/A box next to the associated fields.

\_\_\_\_\_  
Full Name of Active Military Personnel                      Date

\_\_\_\_\_  
Date of Birth                      Home Phone

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
Name of Spouse                       N/A                       N/A  
(if not applicable, check N/A)                      Spouse Date of Birth  
(if not applicable, check N/A)

\_\_\_\_\_  
Name and Date of Birth of Dependents (if not applicable, check N/A)

\_\_\_\_\_  
Branch of Service                      Rank

\_\_\_\_\_  
Name of Unit                      Unit Commander

\_\_\_\_\_  
Unit Address                      Unit Phone

\_\_\_\_\_  
Order No                      Date of Order

\_\_\_\_\_  
Active Duty Station                      Military Job

The undersigned hereby certifies that he/she is on active duty and permanently based in Louisiana and qualifies as "active military personnel" (AMP) as defined by LSA-R.S. 22:1425 and Regulation 81, and is eligible for the military discount set forth in LSA-R.S. 22:1425 for personal automobile liability insurance policy. The AMP further certifies that the information provided in this "Louisiana Application for Military Discount" form is true and correct and that he/she will promptly notify his/her automobile insurer of any change in the above information. The AMP acknowledges that any false, fraudulent or misleading statement may subject him/her to civil and criminal penalties, including those penalties set forth in LSA-R.S. 22:1243, and any applicable provisions of Title 14, the Louisiana Criminal Code.

\_\_\_\_\_  
Signature of Active Military Personnel (AMP)                      Print Name of Active Military Personnel (AMP)

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1425.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:97 (January 2006), LR 33:

**Family Impact Statement**

Pursuant to R.S. 49:953.A.(1)(a)(viii) the commissioner for the LDOI states that there will be no adverse impact on family formation, family stability, and family autonomy, as set forth in R.S. 49:972, from the amendment to Regulation 81.

Pursuant to R.S. 49:953.A.(1)(a), the commissioner for the LDOI states that the time when, the place where, and the manner in which interested personal may present their views with regard to the proposed amendment to Regulation 81 will be at a Public Hearing that will be held on Wednesday, June 27, 2007, at 10 a.m., in the Poydras Hearing Room of the Louisiana Department of Insurance Building, 1702 N. Third Street, Baton Rouge, LA 70802. The name of person within the LDOI who has the responsibility for responding to inquiries about the proposed amendment to Regulation 81 is Walter Corey, Attorney, 1702 N. Third Street, Baton Rouge, LA 70802

James J. Donelon  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Regulation 81—Military Personnel Automobile Liability Insurance Premium Discount and Insurer Premium Tax Credit Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

DOI does not expect any implementation costs as a result of the adoption of this regulation. No additional work is involved. The amendment simply deletes the requirement for the unit commander's signature on the application form.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no increase or decrease in revenue as a result of the proposed Amendment to Regulation 81.



III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The amendment to the regulation simply deletes the requirement for the unit commander's signature on the application form. This involves no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of this regulation should have no impact upon competition and employment in the state.

Chad M. Brown  
Deputy Commissioner  
0705#060

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Conservation**

Exploration and Production Waste  
(LAC 43:XIX.Chapter 3)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq) and Title 30 of the Louisiana Revised Statutes of 1950 (R.S. 30:4 et seq), the Louisiana Office of Conservation hereby gives notice of its intent to revise LAC 43:XIX. Chapter 3 (Statewide Order No. 29-B) Pollution Control-Onsite Storage, Exploration and Production Waste (E&P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations). These revisions include:

1. all references in Chapter 3 to Nonhazardous Oilfield Waste (NOW) are changed to read Exploration and Production (E&P) waste;
2. all references in Chapter 3 to Forms UIC-15, UIC-15-CP, and UIC-16 are changed to refer to Engineering Division forms (ENG-15, ENG-15-CP, and Eng-16) that replaced those of the Underground Injection Control (UIC) section;
3. the manufactured liner thickness requirements of §301, incorrectly listed as 10 mm, is corrected to read 10 mil.;
4. all references in Chapter 3 to the testing procedures used to analyze oilfield waste are changed to refer to the testing procedures contained in the recently revised manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste;"
5. the reference in §311.D to radioisotope sampling and testing being conducted in accordance with the requirements of the Department of Environmental Quality, NORM Regulatory Guide is changed to read "shall comply with the requirements of the Department of Environmental Quality";
6. the "Air Quality Division" of the Department of Environmental Quality, referenced in §307.C.4, is changed to read "Air Permits Division";
7. the new §313.G provides for alternative method of pit closure by allowing properly processed exploration and production waste to be used for onsite land development purposes; and

8. the passive pit closure criteria of §313.H is changed to reflect current effluent guidelines to be used in passive pit closure, provide current contact information for the Department of Wildlife and Fisheries and the Department of Environmental Quality, and reference the proper forms to be used in registering the pit.

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of Conservation—General Operations**

**Subpart 1. Statewide Order No. 29-B**

**Chapter 3. Pollution Control—Onsite Storage, Treatment and Disposal of Exploration and Production Waste (E&P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations)**

Editor's Note: Statewide Order 29-B was originally codified in LAC 43:XIX as §129. In December 2000, §129 was restructured into Chapters 3, 4 and 5. Chapter 3 contains the oilfield pit regulations. Chapter 4 contains the injection/disposal well regulations. Chapter 5 contains the commercial facility regulations. A cross-reference chart in the December 2000 *Louisiana Register*, page 2798, indicates the locations for the rules in each existing Section.

**§301. Definitions**

*Coastal Area*—that area comprising inland tidal waters, lakes bounded by the Gulf of Mexico, and salt water marshes and more particularly identified as the intermediate marshes, brackish marshes, and saline marshes on the Vegetative Type Map of the Louisiana Coastal Marshes, published by the Louisiana Department of Wildlife and Fisheries, August, 1978.

*Community Saltwater Disposal Well or System*—as defined in §501.

*Contamination*—the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil in such quantities as to render them unusable for their intended purposes.

*Elevated Wetland Area*—a wetland area which is not normally inundated with water and where land mass and levee material are available for mixing with waste fluids during closure of a pit.

*Exempt Pits*—compressor station pits, natural gas processing plant pits, emergency pits, and salt dome cavern pits located in the coastal area.

*E&P Waste*—exploration and production waste.

*Exploration and Production Waste*—as defined in §501.

*Groundwater Aquifer*—water in the saturated zone beneath the land surface that contains less than 10,000 mg/l TDS.

*Hydrocarbon Storage Brine*—well water, potable water, rainwater, or brine (partially saturated to completely saturated) used as a displacing fluid in hydrocarbon storage well operations.

*Manufactured Liner*—any man-made synthetic material of sufficient size and qualities to sustain a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec after installation and which is sufficiently reinforced to withstand normal wear and tear associated with the installation and pit use without damage to the liner or adverse affect on the quality thereof. For purposes of this Chapter and Chapter 5, a

manufactured liner used in pit construction must meet or exceed the following standards.

Parameter or Test Standard	
Thickness (average)	> 10 mil (0.01 in)
Breaking Strength (Grab Method)*	90 lbs
Bursting Strength*	140 psi
Tearing Strength*	25 lbs
Seam Strength*	50 lbs

\*Testing is to be performed according to ASTM method D-751, latest revision.

**Mining Water**—well water, potable water, rainwater, or unsaturated brine which is injected into a brine solution mining well for recovery as saturated brine.

**Onsite**—for purposes of this Section, on the same lease or contiguous property owned by the lessor, or within the confines of a drilling unit established for a specific well or group of wells.

**Operation of Oil and Gas Facilities**—as used in this Section, all oil and gas wells, disposal wells, enhanced recovery injection wells and facilities, flowlines, field storage and separation facilities, natural gas processing and/or gas sweetening plants, and compressor stations.

**Pit**—for purposes of this Chapter, a natural topographic depression or man-made excavation used to hold produced water or other exploration and production waste, hydrocarbon storage brine, or mining water. The term does not include lined sumps less than 660 gallons or containment dikes, ring levees or firewalls constructed around oil and gas facilities.

**Produced Water**—liquids and suspended particulate matter that is obtained by processing fluids brought to the surface in conjunction with the recovery of oil and gas from underground geologic formations, with underground storage of hydrocarbons, or with solution mining for brine.

**Production Pits**—either earthen or lined storage pits for collecting E&P Waste sediment periodically cleaned from tanks and other producing facilities, for storage of produced water or other exploration and production wastes produced from the operation of oil and gas facilities, or used in conjunction with hydrocarbon storage and solution mining operations as follows.

1. **Burn Pits**—earthen pits intended for use as a place to temporarily store and periodically burn exploration and production waste (excluding produced water) collected from tanks and facilities.

2. **Compressor Station Pits**—lined or earthen pits intended for temporary storage or disposal of fresh water condensed from natural gas at a gas pipeline drip or gas compressor station.

3. **Natural Gas Processing Plant Pits**—lined or earthen pits used for the storage of process waters or stormwater runoff. No produced water may be stored in a natural gas processing plant pit.

4. **Produced Water Pits**—lined or earthen pit used for storing produced water and other exploration and production wastes, hydrocarbon storage brine, or mining water.

5. **Washout Pits**—lined earthen pits used to collect wash water generated by the cleaning of vacuum truck tanks and other vessels and equipment only used to transport exploration and production waste. Any materials other than E&P Waste are prohibited from being placed in such pits.

6. **Well Test Pits**—small earthen pits intended for use to periodically test or clean up a well.

7. **Emergency Pits**—lined or earthen pits used to periodically collect produced water and other E&P Waste fluids only during emergency incidents, rupture or failure of other facilities.

8. **Onshore Terminal Pits**—lined or earthen pits located in the coastal area used for storing produced water at terminals that receive crude oil and entrained water by pipeline from offshore oil and gas production facilities.

9. **Salt Dome Cavern Pits**—lined or earthen pits located in the coastal area associated with the storage of petroleum products and petroleum in salt dome caverns.

**Reserve Pits**—temporary earthen pits used to store only those materials used or generated in drilling and workover operations.

**Submerged Wetland Area**—a wetland area which is normally inundated with water and where only levee material is available for mixing with waste fluids during closure of a pit.

**Underground Source of Drinking Water (USDW)**—for the purpose of administering these rules and regulations is defined in §403.B.

**Upland Area**—an area which is not identified as a wetland and includes farm land, pasture land, recreational land, and residential land.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:4 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2798 (December 2000), amended LR 33:

### §303. General Requirements

A. Produced water generated from the drilling and production of oil and gas wells shall be disposed of into subsurface formations not productive of hydrocarbons, unless discharged or disposed of according to the provisions of §303.E or transported offsite in accordance with LAC 43:XIX, Subpart 1, Chapter 5.

B. Produced water may be disposed of by subsurface injection into legally permitted or authorized operators saltwater disposal wells, commercial saltwater disposal wells, enhanced recovery injection wells, community saltwater disposal wells, or gas plant disposal wells. The use of hydrocarbon storage brine and mining water in storage and/or mining operations is not considered to be disposal.

C. Contamination of a groundwater aquifer or a USDW with E&P Waste is strictly prohibited. In addition, the injection of E&P Waste into a groundwater aquifer or a USDW is strictly prohibited.

D. Produced water and other E&P Waste generated in the drilling and production of oil and gas wells shall not be disposed of into a zone producing or productive of hydrocarbons unless such disposal is approved by the Office of Conservation after a public hearing or unless prior approval to use the proposed zone for such disposal can be documented.

E. The discharge of produced water or other E&P Waste (including drilled solids) into manmade or natural drainage or directly into state waters is allowed only in conformance with any applicable state or federal discharge regulatory program.

F. The use of closed E&P Waste storage systems is encouraged by the Office of Conservation; therefore, the use

of new or existing pits to store produced water, drilling fluids, and other E&P Waste generated from the drilling and production of oil and gas wells is prohibited unless:

1. notification for each pit is submitted to the Office of Conservation as outlined in §305; and
2. pits are in conformance with standards set forth in §307.

G. Unless exempted from liner requirements in §303.K.8 or §303.M below, all existing produced water pits, onshore terminal pits, and washout pits which are to be utilized in the operation of oil and gas or other facilities must be shown to comply with the liner requirements of §307.A.1.a or be permanently closed in accordance with the pit closure criteria of §311 and §313 by January 20, 1989. A certification attesting to compliance with these requirements shall be submitted to this office in a timely manner.

H. All existing pits which are not to be utilized in the operation of oil and gas or other facilities must be permanently closed according to the requirements of §311 and §313 by January 20, 1989. A certification attesting to compliance with these requirements shall be submitted to this office in a timely manner.

I. Operators of existing pits are required to comply with all applicable operational requirements of §307.A.2 and 4, §307.B.1, 2, and 3, §307.C.2, 4, 5, and 6, §307.D.2, 4, and 5, §307.E.1, 3, 4, and 6, and §307.F.1 and 3.

J. Production pits, except for those identified in §303.K.1 and §303.M below, may not be constructed in a "V" or A zone as determined by flood hazard boundary or rate maps and other information published by the Federal Emergency Management Agency (FEMA), unless such pits have levees which have been built at least 1 foot above the 100-year flood level and able to withstand the predicted velocity of the 100-year flood. Location, construction and use of such pits is discouraged.

K. Production pits located in the coastal area shall be subject to the following requirements.

1. Except for exempt pits, no production pit may be constructed in the coastal area after June 30, 1989.
2. Production pits located in the coastal area shall be closed in compliance with §311 and §313 by January 1, 1993 with the following exceptions:

- a. exempt pits as such term is defined in §301;
- b. any onshore terminal pit that was in existence on June 30, 1989, provided such pit has an approved Louisiana Water Discharge Permit System (LWDPS) permit applicable thereto. Upon expiration of such permit, operator shall discontinue use of said pit and comply with the provisions of §307;

- c. any production pit which is subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit is not subject to the closure requirements of §311 and §313 until January 1, 1995 or until expiration of such permit which ever occurs first. Upon expiration of such permit, operator shall discontinue use of said pit and comply with the provisions of §307.

3. Operators of existing production pits located in the coastal area shall submit Form ENG 15-CP to the Office of Conservation by January 1, 1991. Pits closed prior to October 20, 1990 are not considered existing pits for purposes hereof.

4. Operators intending to construct an exempt pit shall submit Form ENG-15-CP to the Office of Conservation at least 10 days prior to start of construction thereof.

5. Production pits located within the coastal area must maintain a levee with an elevation of at least 2 feet above mean high tide, the liquid level in pit(s) shall not be permitted to rise within 2 feet of top of pit levee or walls, and any surface water discharge from an active pit must be done in accordance with appropriate state or federal regulatory programs. Such discharge must be piped to open water (within the marsh) that receives good flushing action and shall not otherwise significantly increase the salinity of the receiving body of water or marsh. Further, unless otherwise indicated in §303.K.6, 7, 8 and 9, production pits located in the coastal area shall comply with the standards and operational requirements set forth in §307.

6. Burn pits, compressor station pits, natural gas processing plant pits, and well test pits located in the coastal area are exempt from the liner requirements of §307.A.

7. Salt dome cavern pits are exempt from the liner requirements of §307.A.

8. Produced water pits, washout pits, and onshore terminal pits located in the coastal area shall comply with the liner requirements of §307.A unless such pit is subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit.

9. Emergency pits located in the coastal area shall comply with the requirements of §307.E unless such pit is subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit.

10. Any production pit which is not subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit on October 20, 1990 shall submit a closure plan to the Office of Conservation by January 1, 1991.

L. Within six months of the completion of the drilling or workover of any permitted well, the operator (generator) shall certify to the commissioner by filing Form ENG-16 the types and number of barrels of E&P Waste generated, the disposition of such waste, and further certify that such disposition was conducted in accordance with applicable rules and regulations of the Office of Conservation. Such certification shall become a part of the well's permanent history.

M. Based upon the best practical technology, production pits located within an 'A' zone (FEMA) which meet the following criteria are not subject to the levee height requirements of §303.J above or the liner requirements of §307.A.1:

1. pit size is less than or equal to 10' x 10' x 4' deep;
2. such pit contains only produced brine; and
3. such pit is utilized for gas wells producing less than 25 mcf per day and less than or equal to one barrel of saltwater per day (bswpd).

N. Evidence of contamination of a groundwater aquifer or USDW may require compliance with the monitoring program of §309, compliance with the liner requirements of §307.A.1, or immediate closure of the pit.

O. The commissioner may authorize, without the necessity of a public hearing, the disposal of produced water into a zone producing or productive of hydrocarbons upon application of the operator of an existing or proposed

disposal well. Such written request shall include the following:

1. the appropriate permit application as per the requirements of LAC 43:XIX.Chapter 4;
2. evidence establishing the production mechanism of the proposed disposal zone is aquifer expansion (water drive);
3. evidence demonstrating the subject disposal well is not productive in the proposed disposal zone;
4. a plat showing the subject disposal well is not located within 330' of a property line as it is defined in LAC 43:XIX.1901;
5. written consent of all operators of record with existing wells within a 1/4 mile radius of the subject well; and
6. such other information which the commissioner may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2799 (December 2000), amended LR 30:254 (February 2004), LR 33:

### §305. Notification

#### A. Existing Pits

1. Each pit which was constructed prior to January 20, 1986, is an existing pit. Use of an existing pit is prohibited unless the operator has reported that pit to the Office of Conservation by July 20, 1986, according to the requirements of this Paragraph. Notification shall contain the information requested below. Pits closed prior to January 20, 1986, are not considered existing pits.

2. Operators of existing pits must submit the following information to the Office of Conservation by July 20, 1986:

a. for each existing pit to be utilized in the operation of oil and gas facilities, the information requested in §305.D.1-8 below;

b. for each existing pit not to be utilized in the operation of oil and gas facilities the information requested in §305.D.1-6 below;

c. a plan and schedule of abandonment for closure of pits identified in §305.A.2.b above. Such plan must comply with the provisions of §303.H, §311, and §313. Failure to comply with the plan in a timely manner will subject an operator to appropriate civil penalties.

3. Operators of existing pits in the coastal area shall comply with the requirements of §303.K.3.

B. New Pits. Except for reserve pits, operators must notify the Office of Conservation of the intent to construct new pits at least 10 days prior to start of construction. Notification shall contain all information requested in §305.D or §303.K.4 as appropriate. The Office of Conservation may inspect any proposed pit site prior to or during construction; however, initial use of the completed pit need not be deferred if no inspection is made.

C. Reserve Pit Notification. For reserve pits used in drilling and workover operations, notification requirements of this rule shall be satisfied by application for a drilling or work permit.

#### D. Notification Information Required Form ENG-15

1. Name of Facility Pit (indicate whether new or existing)
2. Field Designation, if applicable

3. Section, Township and Range (include approximate footage location of pit center)

4. Parish Name

5. Type of Pit (consistent with definitions in §301)

6. Size of Pit (length, width and depth)

7. Type of Liner, if applicable

8. Certification that each pit will or does conform to standards stipulated under §307 applicable to that type pit and that such compliance will be within the time frame described in §303.G, H, and I, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2801 (December 2000), amended LR 33:

### §307. Pit Classification, Standards, and Operational Requirements

#### A. Produced Water, Onshore Terminal, and Washout Pits

1. Except where exempted by §303.K.8 and §303.M, groundwater aquifer and USDW protection for above-listed pits shall be provided by one of the following.

a. A liner along the bottom and sides of pits which has the equivalent of 3 continuous feet of recompacted or natural clay having a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec. Such liners include, but are not limited to the following.

i. *Natural Liner*—natural clay having a hydraulic conductivity meeting the requirements of §307.A.1.a above.

ii. *Soil Mixture Liner*—soil mixed with cement, clay-type, and/or other additives to produce a barrier which meets the hydraulic conductivity requirements of §307.A.1.a above.

iii. *Recompacted Clay Liner*—in situ or imported clay soils which are compacted or restructured to meet the hydraulic conductivity requirements of §307.A.1.a above.

iv. *Manufactured Liner*—synthetic material that meets the definition in §301 and is equivalent or exceeds the hydraulic conductivity requirements of §307.A.1.a above. Pits constructed with a manufactured liner must have side slopes of 3:1 and the liner at the top of the pit must be buried in a 1' wide and 1' deep trench. A sufficient excess of liner material shall be placed in the pit to prevent tearing when filled with E&P Waste.

v. *Combination Liner*—a combination of two or more types of liners described in this Section which meets the hydraulic conductivity requirements of §307.A.1.a above.

b. Any other alternate groundwater aquifer and USDW protection system acceptable to the Office of Conservation.

2. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphon or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination. Authorized surface discharges of pit contents under federal and/or state regulatory programs are not considered to be pollution or contamination as used herein.

3. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pit as provided under §305.B.

4. Liquid levels in pits shall not be permitted to rise within 2 feet of top of pit levees or walls. Pit levees or walls

shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of E&P Waste to the environment.

5. When use of a pit will be permanently discontinued by the operator of record, the Office of Conservation shall be notified in writing. Pits shall be emptied of all fluids in a manner compatible with all applicable regulations and closed in accordance with §303.F and G within six months of abandonment.

#### B. Reserve Pits

1. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphons or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination. Authorized surface discharges of pit contents under federal or state regulatory programs are not considered to be pollution or contamination as used herein.

2. Liquid levels in pits shall not be permitted to rise within 2 feet of top of pit levees or walls. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of E&P Waste to the environment.

3. Operators shall prevent the placing of produced water, waste oil, trash, or any other material into a reserve pit which would increase the difficulty in clean-up of the pit or otherwise harm the environment. Such material shall be properly stored and disposed of according to applicable state or federal regulations.

4. Pits shall be emptied of fluids in a manner compatible with all applicable regulations, and closed in accordance with §311 and §313 within six months of completion of drilling or work over operations.

#### C. Burn Pits

1. Pits shall be constructed in such a manner as to keep fire hazards to a minimum, and in no case shall be located less than 100 feet from a well location, tank battery, separator, heater-treater, or any and all other equipment that may present a fire hazard.

2. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphons or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination.

3. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pit as provided under §305.B.

4. Any burning process shall be carried out in conformance with applicable air quality regulations. Notification as required by said regulation shall be made to the Air Permits Division, Department of Environmental Quality.

5. No produced water, radioactive material (except industry-accepted and license-approved radioactive material utilized in oilfield operations, and radioactive material naturally occurring in the produced fluids), or other noncombustible waste products shall be placed in pits, except water or emulsion which may be associated with crude oil swabbed or otherwise produced during test operations, or during tank or other vessel cleaning operations. E&P Waste must be removed or burned

periodically to assure that storage of materials in the pit is kept to a minimum.

6. Liquid levels in pits shall not be permitted to rise within 2 feet of top of pit levees or walls. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of E&P Waste to the environment.

7. When use of pits will be permanently discontinued by the operator of record, the Office of Conservation shall be notified in writing. Pits shall be emptied of fluids in a manner compatible with all applicable regulations, and closed in accordance with §311 and §313 within six months of abandonment.

#### D. Well Test Pits

1. Pits shall be constructed in such a manner as to keep fire hazards to a minimum, and in no case shall be located less than 100 feet from a well location, tank battery, separator, heater-treater, or any and all other equipment that may present a fire hazard.

2. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphons or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination.

3. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pit as provided under §305.B.

4. Within 30 days after completion of a well test, pits shall be emptied of produced fluids and must remain empty of produced fluids during periods of nonuse.

5. Liquid levels in pits shall not be permitted to rise within 2 feet of top of pit walls or dikes. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of E&P Waste to the environment.

6. When use of pits will be permanently discontinued, the Office of Conservation shall be notified in writing. Pits shall be emptied of fluids in a manner compatible with all applicable regulations, and closed in accordance with §311 and §313 within six months of abandonment.

#### E. Emergency Pits

1. Groundwater aquifer and USDW protection for emergency pits shall be evaluated on a case-by-case basis. Operators who intend to utilize existing or new emergency pits without liners must demonstrate by written application to the Office of Conservation that groundwater aquifer and USDW contamination will not occur; otherwise, emergency pits shall be lined. Applications to demonstrate unlined pits will not contaminate groundwater aquifers and USDW's shall at a minimum address the following.

a. *Emergency Incident Rate*—operator shall estimate the number of times a pit will be utilized each year. A detailed discussion of the facility operation and reasons for the emergency incident rate must be addressed.

b. *Soil Properties*—operator shall describe and evaluate soil properties onsite. Soil hydraulic conductivity and physical properties must be addressed to assess potential groundwater aquifer and USDW impacts.

c. *Groundwater Aquifer Evaluation*—water quality, groundwater aquifer, and USDW depth shall be evaluated.

d. *Produced Water Composition* (total dissolved solids and oil and grease)—must be determined to assess potential impacts on the site.

2. All emergency pits required to be lined must conform to hydraulic conductivity requirements in §307.A.1 above.

3. No produced water or any other E&P Waste shall be intentionally placed in any emergency pit not meeting the hydraulic conductivity requirements ( $1 \times 10^{-7}$  cm/sec for 3 continuous feet of clay) except in the case of an emergency incident. In emergency situations, notice must be given to the Office of Conservation within 24 hours after discovery of the incident. Produced water and any other E&P Waste must be removed from the pit within seven days following termination of the emergency situation.

4. Pits shall be protected from surface waters by levees and by drainage ditches, where needed, and no siphons or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination. Surface discharges of pit contents under federal or state permits are not considered to be pollution or contamination as used herein.

5. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pits as provided under §305.B.

6. Liquid level in pits shall not be permitted to rise within 2 feet of top of pit levees. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of E&P Waste to the environment.

7. When use of pits will be permanently discontinued, the Office of Conservation shall be notified in writing. After notification to the Office of Conservation, pits shall be emptied of all fluids in a manner compatible with all applicable regulations, and closed in accordance with §311 and §313 within six months of abandonment.

F. *Natural Gas Processing Plant Pits, Compressor Station Pits, and Salt Dome Cavern Pits*

1. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphon or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination. Authorized surface discharges of pit contents under federal and/or state regulatory programs are not considered to be pollution or contamination as used herein.

2. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pit as provided under §305.B.

3. Liquid levels in pits shall not be permitted to rise within 2 feet of top of pit levees or walls. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of E&P Waste to the environment.

4. When use of a pit will be permanently discontinued by the operator of record, the Office of Conservation shall be notified in writing. Pits shall be emptied of all fluids in a manner compatible with all applicable regulations and closed in accordance with §311 and §313 within six months of abandonment.

G. *Office of Conservation Corrective Action and Closure Requirement.* Should the Office of Conservation determine that continued operation of pits specified in this

Subparagraph may result in contamination of a groundwater aquifer or a USDW, or the discharge of fluids into man-made or natural drainage or directly into state waters, or contamination of soils outside the confines thereof, further use of the pit shall be prohibited until conditions causing or likely to cause contamination have been corrected. If corrective measures are not satisfactorily completed in accordance with an Office of Conservation compliance order or schedule, the commissioner may require closure of the pit. When an order for closure is issued, a pit shall be closed in accordance with §311 and §313 and the operator must comply with any closure schedule issued by the Office of Conservation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2801 (December 2000), amended LR 33:

### §309. **Monitoring Program**

A. Upon a determination by the operator or the Office of Conservation that any pit subject to this rule is likely to contaminate a groundwater aquifer or a USDW, the Office of Conservation shall require the timely submission of a plan for the prevention of such contamination. Such plan may include using an under-built drainage and collection system, monitoring wells, and/or other means that the Office of Conservation may approve to prevent or detect contamination. Any required monitor wells shall be registered with the appropriate state agency.

B. When required by the Office of Conservation, monitoring shall be conducted on a quarterly schedule. A written report summarizing the results of such monitoring shall be submitted to the Office of Conservation within 30 days of the end of each quarter.

C. If monitoring of a groundwater aquifer or USDW indicates contamination due to a discharge from a pit, the owner or operator shall immediately notify the Office of Conservation. Within 30 days, the operator shall empty the pit of all E&P Waste and submit a remedial plan for prevention of further contamination of any groundwater aquifer or any USDW. Upon approval, the remedial plan shall be implemented by the operator and monthly progress reports, reviewing actions taken under the plan and their results, will be filed with the Office of Conservation until all actions called for in the plan have been satisfactorily completed.

D. Notification received by the Office of Conservation, pursuant to §309.A, B, or C above, of any contamination of a groundwater aquifer or a USDW as the possible result of a discharge, or information obtained by the exploitation of such notification shall not be used against the reporting owner or operator in any criminal action, including but not limited to those provided for by Louisiana Revised Statutes 30:18, except in a prosecution for perjury or for giving a false statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2803 (December 2000), amended LR 33:

### §311. **Pit Closure**

A. Pits must be closed properly to assure protection of soil, surface water, groundwater aquifers and USDW's.

Operators may close pits utilizing onsite land treatment, burial, solidification, onsite land development, or other techniques approved by the Office of Conservation only if done so in compliance with §313 and §315. Otherwise, all E&P Waste must be manifested according to §511 and transported offsite to a permitted commercial facility.

B. Liability for pit closure shall not be transferred from an operator to the owner of the surface land(s) on which a pit is located.

C. For evaluation purposes prior to closure of any pit and for all closure and onsite and offsite disposal techniques, excluding subsurface injection of reserve pit fluids, exploration and production waste (pit contents) must be analyzed for the following parameters:

1. pH;
2. total metals content (ppm) for:
  - a. arsenic;
  - b. barium;
  - c. cadmium;
  - d. chromium;
  - e. lead;
  - f. mercury;
  - g. selenium;
  - h. silver;
  - i. zinc;
3. oil and grease (percent dry weight);
4. soluble salts and cationic distributions:
  - a. electrical conductivity EC in mmhos/cm (millimhos);
  - b. sodium adsorption ratio SAR;
  - c. exchangeable sodium percentage ESP (percent);
  - d. cation exchange capacity CEC (milliequivalents/100 gm soil).

5. Radioisotopes if such pit is located in the coastal area and is closed after October 20, 1990.

D. Laboratory Procedures for Exploration and Production Waste Analyses

1. For soluble salts, cationic distributions, metals (except barium) and oil and grease (organics) samples are to be analyzed using standard soil testing procedures as presented in the manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste" (Department of Natural Resources, August 9, 1988, or latest revision).

2. For barium analysis, samples are to be digested in accordance with the "True Total" method, as presented in the manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste" (Department of Natural Resources, August 9, 1988 or latest revision).

3. For radioisotopes, the sampling and testing of pit sludges shall comply with the requirements of the Department of Environmental Quality.

E. Documentation of testing and closure activities, including onsite disposal of E&P Waste, shall be maintained in operator's files for at least three years after completion of closure activities. Upon notification, the Office of Conservation may require the operator to furnish these data for verification of proper closure of any pit. If proper onsite closure has not been accomplished, the operator will be required to bring the site into compliance with applicable requirements.

F. Reserve pits utilized in the drilling of wells less than 5,000 feet in depth are exempt from the testing requirements of §311.C and §313 provided the following conditions are met:

1. the well is drilled using only freshwater "native" mud which contains no more than 25 lbs/bbl bentonite, 0.5 lbs/bbl caustic soda or lime, and 50 lbs/bbl barite; and

2. documentation of the above condition is maintained in the operator's files for at least three years after completion of pit closure activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2803 (December 2000), amended LR 33:

**§313. Pit Closure Techniques and Onsite Disposal of E&P Waste**

A. Reserve pit fluids, as well as drilling muds, cuttings, etc. from holding tanks, may be disposed of onsite provided the technical criteria of §313.C, D, E, F, or G below are met, as applicable. All E&P Waste must be either disposed of onsite or transported to an approved commercial facility or transfer station in accordance with the requirements of LAC 43:XIX, Chapter 5 or under the direction of the commissioner.

B. Prior to conducting onsite pit closure activities, an operator must make a determination that the requirements of this Subparagraph are attainable.

C. Unless specifically stated otherwise, all pit closure techniques in this Subparagraph, except solidification, waste/soil mixtures must not exceed the following criteria:

1. range of pH: 6-9 for land treatment and burial and trenching, 6-12 for onsite land development;
2. total metals content (ppm):

Parameter	Limitation
Arsenic	10
Barium	
Submerged Wetland Area	20,000
Elevated Wetland Area	20,000
Upland Area	40,000
Cadmium	10
Chromium	500
Lead	500
Mercury	10
Selenium	10
Silver	200
Zinc	500

D. Land Treatment. Pits containing E&P Waste may be closed onsite by mixing wastes with soil from pit levees or walls and adjacent areas provided waste/soil mixtures at completion of closure operations do not exceed the following criteria, as applicable, unless the operator can show that higher limits for EC, SAR, and ESP can be justified for future land use or that background analyses indicate that native soil conditions exceed the criteria.

1. In addition to the pH and metals criteria listed in §313.C above, land treatment of E&P Waste in submerged wetland, elevated wetland, and upland areas is permitted if the oil and grease content of the waste/soil mixture after closure is < 1 percent (dry weight).

2. Additional parameters for land treatment E&P Waste in elevated, freshwater wetland areas where the disposal site is not normally inundated:

- a. electrical conductivity (EC-solution phase): < 8 mmhos/cm;
- b. sodium adsorption ratio (SAR-solution phase): < 14;
- c. exchangeable sodium percentage (ESP-solid phase): 25 percent.

3. Additional parameters for land treatment of E&P Waste in upland areas:

- a. electrical conductivity (EC-solution phase): < 4 mmhos/cm;
- b. sodium adsorption ratio (SAR-solution phase): < 12;
- c. exchangeable sodium percentage (ESP-solid phase): < 15 percent.

E. Burial or Trenching. Pits containing E&P Waste may be closed by mixing the waste with soil and burying the mixture onsite, provided the material to be buried meets the following criteria:

1. the pH and metals criteria in §313.C above;
2. moisture content: < 50 percent by weight;
3. electrical conductivity (EC): < 12 mmhos/cm;
4. oil and grease content: < 3 percent by weight;
5. top of buried mixture must be at least 5 feet below ground level and then covered with 5 feet of native soil;
6. bottom of burial cell must be at least 5 feet above the seasonal high water table.

F. Solidification. Pits containing E&P Waste may be closed by solidifying wastes and burying it onsite provided the material to be buried meets the following criteria:

1. pH range: 6 - 12;
2. Leachate testing\* for oil and grease: < 10.0 mg/l and chlorides < 500.0 mg/l

\*NOTE: The leachate testing method for oil and grease is included in the manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste" (Department of Natural Resources, August 9, 1988, or latest revision).

3. Leachate testing\* for the following metals:

- a. arsenic < 0.5 mg/l;
- b. barium < 10.0 mg/l;
- c. cadmium < 0.1 mg/l;
- d. chromium < 0.5 mg/l;
- e. lead < 0.5 mg/l;
- f. mercury < 0.02 mg/l;
- g. selenium < 0.1 mg/l;
- h. silver < 0.5 mg/l;
- i. zinc < 5.0 mg/l;

\*NOTE: The leachate testing method for metals is included in the manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste" (Department of Natural Resources, August 9, 1988, or latest revision).

4. top of buried mixture must be at least 5 feet below ground level and covered with 5 feet of native soil;
5. bottom of burial cell must be at least 5 feet above the seasonal high water table;
6. solidified material must meet the following criteria\*:

- a. unconfined compressive strength (Qu): > 20 lbs/in<sup>2</sup> (psi);
- b. permeability: < 1 x 10<sup>-6</sup> cm/sec;
- c. wet/dry durability: > 10 cycles to failure.

\*NOTE: Testing must be conducted according to ASTM or other approved methods prior to pit closure by solidification processes.

G. Onsite Land Development. Reserve pits containing E&P Waste may be closed by processing the waste material with Department of Environmental Quality approved stabilizing additives and using the mixture onsite to develop lease roads, drilling and production locations, etc. provided the following conditions have been met:

1. at least 72 hours prior to commencement of waste processing operations, written notification has been made to the Office of Conservation of the operator's intent to utilize this method of reserve pit closure. This notification shall include a detailed explanation of the methods used to generate the processed waste material, including but not limited to the types and volumes of additives to be used, amounts of processed waste material to be generated, the applications and locations onsite for which the processed waste material will be used, written approval from the surface owner of the property on which the processed waste material is to be applied; and any other pertinent information required by the commissioner;

2. E&P Waste shall not be processed in an unlined reserve pit with a bottom that extends to a depth deeper than 5 feet above the seasonal high water table;

3. the processed waste material meets the following analytical criteria:

- a. pH range of the mixture: 6-12;
- b. electrical conductivity (EC): < 8 mmhos/cm;
- c. oil and grease content: < 1 percent by weight;
- d. total metals content meeting the criteria of §313.C.2 above;
- e. leachate testing\*\* for chloride concentration: < 500 mg/L; and,
- f. NORM concentrations do not exceed applicable DEQ criteria or limits;

\*NOTE: The testing method for pH, EC, and metals shall conform to the requirements of §311.D and is included in the manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste" (Department of Natural Resources, August 9, 1988, or latest revision).

\*\*NOTE: The leachate testing method for metals is included in the manual titled "Laboratory Procedures for Analysis of Exploration and Production Waste" (Department of Natural Resources, August 9, 1988, or latest revision).

4. any pit remaining after the generation and application of the processed waste material shall be closed in conformance with the criteria of §313.D above; and

5. the Commissioner of Conservation, the Secretary of the Department of Natural Resources, and the State of Louisiana shall be held harmless from and indemnified for any and all liabilities arising from onsite land development using processed E&P Waste, and the operator of record and the surface owner shall execute agreements as the commissioner requires for this purpose.

H. Passive Closure

1. The Office of Conservation will consider requests for passive pit closure provided one of the following conditions exists:

- a. where pit closure would create a greater adverse environmental impact than if the pit were allowed to remain unreclaimed;
- b. where pit usage can be justified for agricultural purposes or wildlife/ecological management.



2. Operators requesting passive pit closure shall submit the following:

a. an affidavit requesting passive pit closure for one of the reasons contained in §313. H.1;

b. a copy of ENG-15 or ENG-15-CP with pit identification number shown thereon;

c. an affidavit of no objection from the Louisiana Department of Wildlife and Fisheries obtainable by contacting:

La. Department of Wildlife & Fisheries  
P.O. Box 98000  
Baton Rouge, LA 70898  
Telephone: (225) 765-2819

d. where applicable, an affidavit of no objection from the Department of Natural Resources, Coastal Management Division, obtainable by contacting:

Department of Natural Resources  
Coastal Management Division  
P.O. Box 44487  
Baton Rouge, LA 70804-4487  
Telephone: (225) 342-7591

e. an affidavit of no objection from the landowner endorsing operator's request for passive pit closure;

f. a photograph of the pit in question;

g. an inspection of the pit signed by a conservation enforcement agent and a representative of the operator. The operator shall contact the applicable conservation district office to arrange date and time for inspection;

h. analytical laboratory reports of the pit bottoms and pit levees indicating conformance with applicable land treatment criteria set forth in §313.C and D;

i. an analytical laboratory report of the fluid contents of the pit indicating conformance with applicable state and federal effluent guidelines for oil and gas exploration and production. Contact the Department of Environmental Quality, Office of Environmental Services, (225) 219-3181 for information regarding effluent limitations.

3. The Commissioner of Conservation retains the right to grant exceptions to the requirements of §313.H.2 as he deems appropriate.

I. Offsite Disposal of E&P Waste

1. Except for produced water, drilling, workover and completion fluids, and rainwater which may be transported by an oil and gas operator to a community well or an operators permitted Class II disposal well or discharged to surface waters where authorized, exploration and production waste shall not be moved offsite for storage, treatment, or disposal unless transported to an approved commercial facility or transfer station in accordance with the requirements of LAC 43:XIX, Chapter 5 or under the direction of the commissioner.

2. The criteria for land treatment, burial, solidification, or onsite generation of reuse material listed above will apply, as appropriate, to the onsite disposal of any exploration and production waste remaining onsite.

3. E&P Waste that fails to meet the criteria of this Paragraph for onsite disposal shall be moved offsite by the operator to a permitted commercial facility or transfer station in accordance with the requirements of LAC 43:XIX, Chapter 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2804 (December 2000), amended LR 33:

**Family Impact Statement**

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed rule amendment at LAC 43:XIX, Subpart 1, Chapter 3 on family as defined therein.

1. The proposed Rule amendment will have no effect on the stability of the family.

2. The proposed Rule amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule amendment will have no effect on the functioning of the family.

4. The proposed Rule amendment will have no effect on family earnings and family budget.

5. The proposed Rule amendment will have no effect on the behavior and personal responsibility of children.

6. Family or local government is not required to perform any function contained in the proposed Rule amendment.

The Commissioner of Conservation will conduct a public hearing at 9 a.m., Tuesday, June 26, 2007 in the Labelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by Docket No. 07-385. Such comments must be received no later than Monday, June 10, 2007 at 4:30 p.m., and should be sent to Doyle Johnson, P. O. Box 94275, Baton Rouge, LA 70804-9275; hand delivered to 617 North Third Street, 9th Floor, Baton Rouge, LA 70802; or by fax to (225) 342-2584.

James H. Welsh  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Exploration and Production Waste**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No additional implementation costs (savings) to State or Local government units are anticipated to implement the proposed rule amendments.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed revisions of Chapter 3 reflect current nomenclature for exploration and production (E&P) waste, reflect the correct designation of forms required by the Office of Conservation, correct the manufactured liner thickness criteria of §301, reflect proper reference to the "Laboratory Procedures Manual for Analysis of Exploration and Production Waste," remove reference to the Department of Environmental Quality, NORM Regulatory Guide and Air Quality Division, and reflect current criteria for passive pit closure, all of which will not have any associated costs and/or economic benefits.

The proposal to allow for closure of reserve pits by the generation of onsite land development material to be used in the building of lease roads and production facilities may in some instances result in an economic benefit to companies drilling for oil and gas. The actual cost savings realized in generating processed waste material for land development use in reserve pit closures are small, if any, when compared to the costs associated with conventional methods of land treatment, solidification, and burial and trenching. The primary benefit realized in these cases will be the reduced exposure and liability of sending the waste to a third party offsite for disposal. In cases where the conventional pit closure methods are not feasible, such as in wetlands, the cost savings could be substantial.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

James H. Welsh  
Commissioner  
0705#053

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of the State Fire Marshal**

Fire Protection Licensing (LAC 55:V.Chapter 30)

In accordance with the provisions of R.S. 49:950, et. seq. and R.S.40:1664.2, relative to the authority of the State Fire Marshal to promulgate and enforce rules, relative to the regulation of Life Safety and Property Protection, in particular, Portable Fire Extinguishers, Fire Hoses, Hydrostatic Testing of Department of Transportation fire protection cylinders, Fixed Fire Suppression Equipment and/or Systems and Fire Detection and Alarm Equipment and/or Systems, notice is hereby given that the Office of the State Fire Marshal intends to amend the following Rule, replacing Chapter 30 in its entirety.

**Title 55**

**PUBLIC SAFETY**

**Part V. Fire Protection**

**Chapter 30. Portable Fire Extinguishers, Fire Hoses, Hydrostatic Testing, Fixed Fire Suppression Equipment and/or Systems and Fire Detection and Alarm Equipment and/or Systems Rules**

**§3001. Purpose**

A. The purpose of these rules is to regulate the activity of certifying, inspecting, installing, maintaining and servicing of portable fire extinguishers and fire hoses and/or the certifying, inspecting, installing, integrating, maintaining or servicing of fixed fire suppression equipment and/or systems or fire detection and alarm equipment and/or systems and/or hydrostatic testing Department of Transportation (DOT) fire protection cylinders in the interest of protecting and preserving lives and property pursuant to authority of R.S. 40:1664 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1324 (June 2000), LR 33:

**§3003. Applicability of Rules**

A. These rules shall apply to all firms and persons engaged in the activity of certifying, inspecting, installing, maintaining and servicing of portable fire extinguishers and fire hoses and/or the certifying, inspecting, installing, integrating, maintaining or servicing of fixed fire suppression equipment and/or systems or fire detection and alarm equipment and/or systems and/or hydrostatic testing of DOT fire protection cylinders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1324 (June 2000), LR 33:

**§3005. Exceptions**

A. These rules shall not apply to the following:

1. firms and/or persons engaging in the activity of certifying, inspecting, installing, integrating, or servicing fire detection and alarm equipment and/or systems in one or two family dwellings;

2. the servicing by industrial facilities and fire departments of their own portable fire extinguishers by their own employees specially trained to perform such.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1324 (June 2000), LR 33:

**§3007. Notices by the Fire Marshal**

A. Any notice required to be given by the State Fire Marshal by any provision of R.S. 40:1664 et seq., or these rules must be given by personal or domiciliary service or mailed, postage prepaid, to the person's residence or firm address as it appears on the records in the Office of State Fire Marshal. It is the responsibility of the person or firm involved to assure that the Office of the State Fire Marshal has a correct address for the person or firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended by LR 26:1324 (June 2000), LR 33:

**§3009. Certificate, License Required**

A. Each firm engaged in the activity of certifying, inspecting, installing, maintaining or servicing portable fire extinguishers or fire hoses or certifying, inspecting, installing, integrating, maintaining or servicing fixed fire suppression equipment and/or systems or fire detection and alarm equipment and/or systems or performing hydrostatic testing on DOT fire protection cylinders shall apply for a certificate of registration in the endorsements of certification desired in accordance with these rules prior to conducting any such activity in this state.

B. Each person or employee, including apprentices, engaged in the activity of inspecting, installing, servicing portable fire extinguishers or fire hoses or certifying, inspecting, installing, integrating, or servicing fixed fire suppression equipment and/or systems or fire detection and alarm equipment and/or systems or performing hydrostatic testing on DOT fire protection cylinders shall apply for a license in the endorsements of licensure desired in accordance with these rules prior to conducting any such activity in this state.

C. Any firm and/or person described in A or B of this section, which has not applied for and received a current and valid certificate of registration or license, shall immediately cease such activities. The Office of State Fire Marshal may take all steps necessary to enforce an order to cease and desist.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1664.2.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1325 (June 2000), LR 33:

### §3011. Definitions

A. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

*Activity*—the inspecting, installing, maintaining and servicing of portable fire extinguishers and fire hoses and the certifying, inspecting, installing, integrating, maintaining or servicing of fixed fire suppression or fire detection and alarm equipment and/or systems and/or engaging in hydrostatic testing of DOT fire protection cylinders pursuant to R.S.40:1664 et seq.

*Apprentice*—a person who is licensed to work under the direct supervision and accompaniment of a technician who is licensed to the same firm and holding a valid license to perform the same acts.

*Certificate of Registration*—that document issued by the State Fire Marshal to a firm authorizing it to engage in such activities as defined in these rules.

*Certify*—to attest to the proper charging, or filling, or functionality, or hydrostatic testing, or inspection, or installation, or integration, or maintenance, or recharging, or refilling, or repair, or service, or testing of portable fire extinguishers, fire hoses, DOT fire protection cylinders, fixed fire suppression and/or fire detection and alarm equipment and/or systems in accordance with all applicable engineered specifications, manufacturer's specifications and per the inspection, testing and maintenance chapters as set forth in the applicable NFPA codes and standards.

*Contact Person*—that individual designated by a firm to act as liaison with the Office of the State Fire Marshal.

*Department of Transportation (DOT) Fire Protection Cylinder*—all portable fire extinguisher or fixed fire suppression system cylinders manufactured and tested in compliance with specifications and requirements of the United States Department of Transportation.

*Employee*—one who works for a "firm", as defined by R.S.40:1664, in return for financial or other compensation. The term shall include the following:

1. for the purposes of the licensing requirements contained in R.S. 40:1664, employees shall not include secretaries, drivers, accounting personnel, or persons who sell portable fire extinguishers or single station smoke/fire detectors;

2. for the purposes of licensing requirements, the firm owner or owners shall be considered an "employee" if he or she is or will be physically certifying, inspecting, installing, maintaining or servicing portable fire extinguishers or certifying, inspecting, installing, integrating, maintaining or servicing fixed fire suppression systems and/or equipment or in certifying, inspecting, installing, integrating, maintaining or servicing fire detection and alarm systems and/or

equipment or performing hydrostatic testing on DOT fire protection cylinders or fire hoses.

*Engineered Fixed Fire Suppression Systems*—special systems individually designed or altered in accordance with nationally recognized fire protection system design standards and manufacturer's guidelines.

*Fire Alarm Endorsement*—that document issued by the State Fire Marshal that authorizes a firm or person to engage in the certifying, inspecting, installing, integration, maintaining and servicing of fire detection and alarm systems and those activities specifically authorized by a Non-Required Systems endorsement.

*Fire Alarm Non-Required Systems Endorsement*—that document issued by the State Fire Marshal that authorizes a firm or person to engage in the activity of certifying, inspecting, installing, integration, maintaining and servicing of fire detection and alarm systems in structures or occupancies which are not required by NFPA 101 to be protected by an approved fire alarm and detection system.

*Fire Alarm Owner Endorsement*—that document issued by the State Fire Marshal that authorizes an owner of a fire alarm system or his employee to perform routine inspection, and minor service and repairs of fire detection and alarm systems within the owner's own facilities only. No installing, integration, or certifying of these systems is permitted. Minor service and repair is defined as repair/replacement of single initiating and/or annunciating devices with identical new devices. No service within the alarm control panel shall be permitted except that the exchanging of system batteries with identical new ones is permitted. Routine inspection is defined as visual inspections and monthly drill tests.

*Fire Detection and Alarm Systems*—those assemblies of wiring, electronic transmitting devices, detection devices, and related equipment for the detection of products of combustion or flammable gases, heat and smoke and for alerting occupants and fire department personnel of a fire emergency.

*Fire Hose*—a flexible conduit used to convey water.

*Fire Protection Equipment/Systems*—as governed by R.S. 40:1664 et seq., includes any equipment/system relating to portable fire extinguishers, fixed fire suppression systems (pre-engineered or engineered) and/or fire detection and alarm systems.

*Firm*—a sole proprietorship, partnership, corporation, limited Liability Company or any other entity.

*Fixed Fire Suppression System Endorsement*—that document issued by the State Fire Marshal that authorizes a firm or person to engage in the certifying inspecting, installing, integration, maintaining and servicing of engineered or pre-engineered fixed fire suppression systems. Please note: Hydrostatic testing of fixed fire suppression cylinders required by the U.S. DOT requires a Hydrostatic Testing Endorsement.

*Hydrostatic Testing*—pressure testing fire protection cylinders or fire hoses by approved hydrostatic methods and in accordance with NFPA codes and/or the U.S. Department of Transportation.

*Hydrostatic Testing Endorsement*—that document issued by the State Fire Marshal that authorizes a firm or person to engage in hydrostatic testing of fire protection cylinders manufactured in accordance with the specification and procedure of the United States Department of

Transportation. A Hydrostatic Testing Endorsement is only valid if the firm or person also has a Portable Fire Extinguisher/Fire Hose Endorsement for testing DOT fire extinguisher cylinders and either a Fixed Fire Suppression System, Pre-Engineered Fixed Fire Suppression System or Kitchen Fixed Fire Suppression endorsement for testing DOT fixed fire suppression cylinders as well.

*Inspection*—a visual examination of a system or portion thereof to verify that it appears to be in operating condition and is free of physical damage. It does not include "quick checks" required every 30 days of portable fire extinguishers.

*Installation*—the initial placement of a portable fire extinguisher, fixed fire suppression equipment and/or systems, fire detection and alarm equipment and/or systems or an extension, or alteration after initial placement.

*Integration*—the act of utilizing accepted and approved fire protection systems and/or equipment and components in accordance with manufacturers' direction to develop a unified and functioning system meeting applicable NFPA codes and standards.

*Kitchen Fixed Fire Suppression System*—those specific fire suppressions systems designed to protect appliances within commercial cooking operations.

*Kitchen Fixed Fire Suppression System Endorsement*—that document issued by the State Fire Marshal that authorizes a firm or person to engage in the activity of certifying, inspecting, installing, integration, maintaining or servicing pre-engineered fixed fire suppression systems containing wet or dry chemical agents within a kitchen ventilation system.

Please Note: Hydrostatic testing of fixed fire suppression cylinders required by the U.S. DOT requires a Hydrostatic Testing Endorsement.

*License*—that document issued by the State Fire Marshal to an employee of a certified firm authorizing the employee to engage in the activities as defined by these rules.

*Maintenance*—work, including, but not limited to repair, replacement, and service, performed to ensure that equipment operates properly. For portable fire extinguishers, it includes a thorough examination for physical damage or condition to prevent its operation and any necessary repair or replacement.

*Nationally Recognized Testing Laboratory*—a nationally recognized testing company concerned with product and service evaluation, which, after conducting successful examinations, inspections, tests and reexaminations, reflects approval by various labeling, listing and classification actions.

*NFPA*—the National Fire Protection Association, Inc., a nationally recognized standards-making organization.

*Non-Conforming*—a system or component of a system which does not comply with applicable NFPA codes or standards.

*Non-Required*—a system or component of a system which is not required by the applicable occupancy chapter of NFPA 101 (Life Safety Code).

*Office*—Office of State Fire Marshal.

*Operating Location*—a physical office which houses employees and business documents or records and from which the acts authorized by the certificate of registration are performed.

*Person*—a natural individual, including any owner, manager, officer, or employee of any firm.

*Pocket License*—that document issued by the State Fire Marshal to an employee of a certified firm, in pocket size and bearing a photographic image of the licensee, authorizing the employee to engage in the activities as defined by these rules.

*Pre-Engineered Fixed Fire Suppression Systems*—packaged systems which consist of system components designed to be installed according to pretested limitations as approved or listed by a testing laboratory. Pre-engineered systems may incorporate special nozzles, flow rates, methods of application, nozzle placement and pressurization levels, which may differ from those detailed elsewhere in NFPA. Pre-engineered systems shall be installed to protect hazards within the limitations that have been established by the testing laboratories where listed.

*Pre-Engineered Fixed Fire Suppression Endorsement*—that document issued by the State Fire Marshal that authorizes a firm or person to engage in the activity of certifying, inspecting, installing, integration, maintaining or servicing pre-engineered fixed fire suppression systems and those activities specifically authorized by a Kitchen Suppression Endorsement.

Please Note: Hydrostatic testing of fixed fire suppression cylinders required by the U.S. DOT requires a Hydrostatic Testing Endorsement.

*Portable Fire Extinguisher*—a portable device containing a suppression agent that can be expelled under pressure for the purpose of suppressing or extinguishing a fire and shall include semi-portable fire extinguishers.

*Portable Fire Extinguisher/Fire Hose Endorsement*—that document issued by the State Fire Marshal that authorizes a firm or person to engage in the activity of certifying, inspecting, installing, maintaining or servicing portable fire extinguishers and fire hoses and hydrostatic testing of portable fire extinguisher cylinders not required by the U.S. Department of Transportation (U.S. DOT).

Please Note: Hydrostatic testing required by the U.S. DOT requires a Hydrostatic Testing Endorsement.

*Qualifying Person*—the employee of a firm who currently meets the certification, examination and/or training requirements set for each endorsement by the Life Safety and Property Protection Advisory Board.

*Recharge*—the replacement of the suppression agent, the expellant or both.

*Required*—a system or component of a system which is required by the applicable occupancy chapter of NFPA 101 (Life Safety Code).

*Semi-Portable*—any portable fire extinguisher mounted on skids or wheels.

*Service*—the act of repair or replacement of fire protection equipment/systems to ensure the proper functioning of the equipment/system.

*Shop*—a facility of a certified firm where certifying, inspecting, integrating, maintaining, pre-assembling, servicing, repairing or hydrostatic testing is performed and where firm records, parts and equipment are maintained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 17:972 (October 1991), LR 26:1325 (June 2000), LR 33:

### §3013. Certificates of Registration

A. Every firm must obtain from the State Fire Marshal a certification of registration with the appropriate endorsements as provided for by R.S.40:1664 et seq., before engaging in the activity of certifying, inspecting, installing, maintaining or servicing portable fire extinguishers or fire hoses or certifying, inspecting, installing, integrating, maintaining or servicing fixed fire suppression systems or fire detection and alarm systems and/or engaging in hydrostatic testing of DOT fire protection cylinders.

1. Each firm, as defined by R.S.40:1664 et seq., shall have at least one licensed technician per endorsement of certification to perform the act or acts authorized by its certificate.

2. Firms as defined by R.S.40:1664 et seq., and their owners shall be responsible for the acts of their agents and employees for the purpose of these rules including the initiation of administrative action by the state fire marshal.

B. The following shall apply to certificates of registration.

1. Posting. Each certificate shall be posted conspicuously at each firm and/or branch office premises. All firms without a physical location in this state shall be required to purchase a duplicate certificate to post in each vehicle which will come into this state to do work.

2. Changes of Ownership. The change of a firm's majority ownership invalidates the current certificate. To assure continuance of the firm, an application for a new certificate shall be submitted to the State Fire Marshal within 10 days after such change in ownership.

3. Change of Corporate Officers. Any change of corporate officers must be reported in writing to the State Fire Marshal within 10 days of the change, and does not require a revised certificate.

4. Duplicates. A duplicate certificate must be obtained from the State Fire Marshal to replace a lost or destroyed certificate. The certificate holder must submit written notification of the loss or destruction within 10 days, accompanied by the required fee specified in these rules.

5. Revisions/Changes. The change of a firm's name, location, or mailing address or operating status requires a revision of the certificate of registration. Certificates of registration requiring changes must be surrendered to the State Fire Marshal within 10 days after the change requiring the revision. The certificate of registration holder must submit written notification of the change with the surrendered certificate of registration, accompanied by the required fee specified in by R.S. 40:1664 et seq.

6. Non-Transferability. A certificate of registration is not transferable from one firm to another.

7. Validity. A certificate of registration is valid for one year from date of issue, and must be renewed annually unless the State Fire Marshal adopts a system under which certificates expire on various dates during the year. Should a staggered renewal system be adopted, the renewal fees shall be prorated on a monthly basis so that each registrant pays only that portion of the fee that is allocable to the number of months during which the certificate is valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1327 (June 2000), LR 33:

### §3015. Licensure

A. Required. Each person who certifies, inspects, installs, maintains and services portable fire extinguishers, and/or certifies, inspects, installs, integrates, maintains or services fixed fire suppression systems and/or fire detection and alarm systems and/or engages in hydrostatic testing of DOT fire protection cylinders shall have a current and valid license issued by the State Fire Marshal.

B. Types of Endorsement. Each license shall be identified by endorsement, which indicates the authorized act or acts which may be performed by the licensee as follows:

1. Portable Fire Extinguisher/Fire Hose Technician Endorsement authorizes the person to certify, inspect, install, maintain and service portable fire extinguishers and fire hoses. No certifying, inspecting, installing, integration, maintaining or servicing of the fire hose station or standpipe system is permitted unless properly licensed for fire sprinkler contracting.

2. Pre-Engineered Fixed Fire Suppression Technician Endorsement authorizes the person to certify, inspect, install, integrate, maintain and service pre-engineered fixed fire suppression systems.

3. Kitchen Fixed Fire Suppression Technician Endorsement authorizes the person to certify, inspect, install, integrate, maintain and service pre-engineered fixed fire suppression systems containing wet or dry chemical agents within a kitchen ventilation system.

4. Fixed Fire Suppression System Technician Endorsement authorizes the person to certify, inspect, install, integrate, maintain and service engineered or pre-engineered fixed fire suppression systems.

5. Fire Alarm Technician Endorsement authorizes a person to certify, inspect, install, integrate, maintain and service fire detection and alarm systems.

6. Fire Alarm Non-Required Systems Technician Endorsement authorizes the person to certify, inspect, install, integrate, maintain and service fire detection and alarm systems in structures or occupancies which are not required by NFPA 101 to be protected by an approved fire detection and alarm system.

7. Fire Alarm Owner Technician Endorsement authorizes the person to perform routine inspection and minor service and repair of fire detection and alarm systems/equipment within the owner's own facility. No certifying, installing or integrating of these systems/equipment is permitted. Minor service and repair is defined as repair/replacement of single initiating and/or annunciating devices with identical new devices or the replacement of the system's batteries. Routine inspection is defined as visual inspections and monthly drill tests.

8. DOT Hydrostatic Testing Technician Endorsement authorizes the person to pressure test fire protection cylinders by approved hydrostatic methods and in accordance with NFPA codes and the U.S. Department of Transportation.

9. Apprentice Endorsement authorizes the person to inspect, install, maintain and service portable fire extinguishers, fire hoses, fixed fire suppression systems and/or equipment of fire detection and alarm systems and/or equipment only while under the direct supervision of and accompanied by a licensed technician who holds a current

and valid license for the work to be performed. An apprentice cannot certify fire protection systems or equipment. An apprentice endorsement can be renewed annually as long as the individual or firm desires. The supervising technician and trainee must work for the same firm which must be certified for the work to be performed.

C. Posting. It is not necessary to post an employee license on a wall. A master list of all employees' names and license numbers must be kept at each office location and must be available for review upon request by the State Fire Marshal or his designated representative.

D. Pocket License. The pocket license is for immediate identification purposes only so long as such license remains valid and while the holder is employed by the firm reflected on the license and shall be on his/her person at all times when conducting fire protection work in the field. The pocket license need not be visibly displayed when working in areas where the license may be damaged or lost. The license must still be available for inspection upon request.

E. Duplicate License. A duplicate license must be obtained from the State Fire Marshal to replace a lost or destroyed license. The license holder and his employer must submit written notification within 10 days of the loss or destruction of a license, accompanied by the required fee as specified in these rules.

F. Revised Licenses. The change of a licensee's employer, home address or mailing address or employment status requires a revised license. Licenses requiring revision must be surrendered to the State Fire Marshal within 10 days after the change requiring the revision. The license holder and his employer must submit written notification of the necessary change with the surrendered license, accompanied by the required fee as specified in these rules.

G. Non-Transferable. A license is not transferable from one person to another or from one firm to another.

H. License Reciprocity. The State Fire Marshal may waive license requirements for an applicant with a valid license from another state if that state has license requirements substantially equivalent to Louisiana and which recognizes licenses issued by this office.

I. Validity. A license is valid for one year from date of issue, and must be renewed annually unless the State Fire Marshal adopts a system under which licenses expire on various dates during the year. Should a staggered renewal system be adopted, the renewal fees shall be prorated on a monthly basis so that each licensee pays only that portion of the fee that is allocable to the number of months during which the license is valid.

J. Age Limitations. For the purpose of licensing, no one under the age of 18 shall be eligible for a technician's license and no person under the age of 16 shall be eligible for an apprentice license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 17:972 (October 1991), LR 26:1328 (June 2000), LR 33:

### **§3017. Alteration of Certificates or Licenses**

A. Any alteration of a certificate of registration or license renders it invalid and such alteration shall be the basis for administrative action in accordance with penalties set forth in R.S.40:1664 et seq., and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1329 (June 2000), LR 33:

### **§3019 Application for Certificates of Registration**

A. Applications for a certificate of registration for fire protection firms shall be in writing on the forms provided by the State Fire Marshal and accompanied by the required fee as specified in these rules.

B. The application for certificates of registration shall:

1. be executed by the sole proprietor, by each partner of a partnership, or by the authorized officer of a corporation or association;

2. identify the type of endorsement applied for;

3. identify the principal location of the firm;

4. identify the firm's Louisiana sales tax number and federal tax number;

5. identify any and all names by which the firm may conduct activity regulated by R.S. 40:1664 et seq., and these rules;

6. identify the contact person as defined by these rules;

7. identify the qualifying person for each endorsement applied for;

8. include a separate employee application for their qualifying person along with the qualifying person's credentials as required by the Life Safety and Property Protection Advisory Board and an originally signed and notarized employment affidavit;

9. be accompanied by:

a. at least one application with fee from an employee seeking to obtain a technician's license in each endorsement;

b. a current certificate of insurance issued to the Office of State Fire Marshal showing a minimum of \$500,000 coverage.

c. a copy of the local firm or occupational license for the firm;

10. (if the firm desires a Hydrostatic Testing Endorsement) be accompanied by the following:

a. a copy of the DOT letter registering applicant's facility which awards a registration number to the facility; and

b. a copy of the firm's identifying mark (symbol);

11. (for out of state firms) include a list of all vehicles which shall come into this state to conduct activity regulated by R.S. 40:1664 et seq., and these rules. The list shall include the vehicle's make, model, year and license number.

C. The application shall also include written authorization by the applicant permitting the State Fire Marshal or his representative to enter, examine, and inspect any premise, building, room, vehicle, or establishment used by the applicant while engaged in activity to determine compliance with the provisions of R.S.40:1664 et seq., and these rules.

D. When the applicant has completed the requirements contained above, a pre-certification inspection may be conducted at the facilities or of the vehicles of the applicant. Such inspection is to determine that such equipment necessary to perform activities in accordance with the applicable NFPA codes and/or standards, UL or manufacturer's specifications for which the applicant is

applying to be certified is on hand. The office may inspect vehicles, equipment, buildings, devices, premises or any area to be used in performing the activities allowed by the certificate of registration. After issuance of a certificate of registration, such facilities may be inspected annually thereafter or as frequently as deemed necessary to ensure that the equipment requirement continues to be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 17:972 (October 1991), LR 26:1329 (June 2000), LR 33:

### **§3021. Qualifying Persons**

A. Each certified firm or each firm seeking certification shall employ at least one qualifying person for each endorsement it is making application for. No fire protection system or equipment shall be certified, hydrostatically tested, inspected, installed, integrated, maintained, serviced, or submitted to this office for review if the firm does not employ a qualifying person as provided herein.

B. The qualifying person shall be a paid employee and shall receive a W-2 or K-1 tax form from the firm. The qualifier shall only qualify one firm for which he is employed. An individual may not qualify multiple firms at the same time. A contract employee cannot be used to fulfill this requirement except as provided by Subsection G below. A qualifier must physically reside within 150 miles of the office for which he or she qualifies.

C. The qualifying person shall be primarily and actively engaged in direct supervision of the certification, hydrostatic testing, integrating, inspection, installation, maintaining and servicing of those fire protection systems or equipment the firm holds endorsements for. If a firm holds multiple endorsements, then multiple qualifiers may be utilized to meet this requirement. Upon request by the fire marshal or his representative, a qualifier shall provide documentation attesting to his or her direct supervision of any certification, hydrostatic testing, integration, inspection, installation, maintenance or service performed by the firm he or she qualifies.

D. A qualifier must meet the minimum examination, certification, or training requirements as established by the Life Safety and Property Protection Advisory Board. The state fire marshal shall send notice to licensed firms of all changes to qualifier credentials made by the Life Safety and Property Protection Advisory Board.

E. The following requirements are required for the endorsements listed.

1. Fixed Fire Suppression Endorsement—a current NICET Certificate, minimum Level III in Special Hazards Suppression Systems, or a professional engineer currently registered with the Louisiana Board of Professional Engineers with a Mechanical Engineer endorsement.

2. Fire Alarm Endorsement—a current NICET Certificate, minimum Level III in Fire Alarm Systems, or a professional engineer currently registered with the Louisiana Board of Professional Engineers with an Electrical Engineer endorsement.

F. A Louisiana Board of Professional Engineers registered Fire Protection Engineer may substitute for any of the above if documented to be in the appropriate discipline of endorsement.

G. At anytime that a firm finds itself without a qualifying person, such firm shall only be able to continue certifying, hydrostatic testing, inspecting, maintaining and/or servicing existing contractual obligations for that endorsement but shall not engage in any new work until a qualifying person has been employed as provided herein.

H. This office shall be notified in writing within 10 working days anytime a qualifying person's employment is terminated for any reason.

I. A firm which loses its qualifying person and has timely notified the Office of the State Fire Marshal shall have 60 days to hire another qualifying person. If after the loss of such an employee, a replacement cannot be found within the 60 days, the firm may make a request to the Office of the State Fire Marshal to temporarily hire a qualifying person on a contractual basis. Good cause must be shown why another employee cannot be permanently hired. Approval by the Office of the State Fire Marshal for the hiring of a qualifying person on a contractual basis shall not exceed six months. Not later than 30 days prior to the expiration of the six month period, the firm can request an additional six-month period to employ a qualifying person on a contractual basis. The Office of the State Fire Marshal may grant one additional six-month period during which a firm may employ a qualifying person on a contractual basis.

J. Failure to notify this office in writing within 10 working days of the loss of a qualifying person will cause forfeiture of any extension of time to hire another qualifying person.

K. A qualifying person must obtain an individual employee license as required by these rules. Licensure of the qualifier shall include a signed and notarized affidavit indicating the employment relationship and duties of the qualifier. If a firm desires to use multiple qualifiers for submitting plans and supervising installations or service, then it must register and license the additional qualifiers with the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 33:

### **§3023. Application for Licenses**

A. Applications for a license from an employee of a certified firm shall be on forms provided by the State Fire Marshal and accompanied by the required fee as specified in these rules.

B. Applications for technicians' licenses shall be accompanied by a written statement from the employer certifying the applicant's competency to certify, hydrostatic test, inspect, install, integrate, maintain or service those systems and/or equipment for which the applicant desires to become licensed.

C. Applications for technicians' licenses will not be accepted unless accompanied by documentation showing that the applicant has met all competency requirements as determined by the Life Safety and Property Protection Advisory Board.

D. No competency examination is required for an apprentice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1330 (June 2000), LR 33:

**§3025. Fees—General Information**

A. Every fee required in accordance with the provisions of R.S. 40:1664 et seq., and these rules, shall be paid by firm check or certified funds made payable to the "Office of State Fire Marshal." Cash or personal checks cannot be accepted.

B. Fees shall be paid at, or mailed to, the Office of the State Fire Marshal at 8181 Independence Blvd., Baton Rouge, LA 70806.

C. Late fees are required on all certificates of registration or license holders who fail to submit renewal applications in a timely fashioned as outlined in R.S. 40:1664 et seq.

D. A renewal application accompanied by the required renewal fee and deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a legible postmark date which is on or before the expiration date of the certificate or license being renewed.

E. Certificates or licenses which have been expired for more than 60 days will be suspended and applicants must apply and pay for a new certificate of registration or license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1330 (June 1330), LR 33:

**§3027. Fees—Specific Information**

A. Certificate of Registration Fees

Certificate	Initial	Renewal
<b>Technical Endorsement</b>		
Fixed Fire Suppression	\$350	\$100
<b>Specialty Endorsement</b>		
Pre-Engineered	\$350	\$100
Kitchen Suppression	\$350	\$ 50
<b>Technical Endorsement</b>		
Fire Alarm	\$350	\$100
<b>Specialty Endorsement</b>		
Fire Alarm (Non-required)	\$350	\$ 50
Fire Alarm Owner	\$350	\$ 50
<b>Technical Endorsement</b>		
Portable Fire Extinguishers/Hoses	\$350	\$150
<b>Technical Endorsement</b>		
DOT Hydrostatic testing	\$350	\$ 50

B. License Fees

Certificate	Initial	Renewal
<b>Technical Endorsement</b>		
Fixed Fire Suppression	\$50	\$50
<b>Specialty Endorsement</b>		
Pre-Engineered	\$50	\$50
Kitchen Suppression	\$50	\$50
<b>Technical Endorsement</b>		
Fire Alarm	\$50	\$50
<b>Specialty Endorsement</b>		
Fire Alarm(Non-required)	\$50	\$50
Fire Alarm Owner	\$50	\$50
<b>Technical Endorsement</b>		
Portable Fire Extinguishers/Hoses	\$50	\$50
<b>Technical Endorsement</b>		
DOT Hydrostatic testing	\$25	\$25
<b>Technical Endorsement</b>		
Apprentice	\$50	\$50

C. Late Renewal Fee. A penalty shall be assessed in accordance with R.S. 40:1664 for the late renewal of a certificate of registration or license.

D. Change in ownership—\$350.

E. Changes or alterations—\$20.

F. Duplicate Certificates of Registration—\$20.

G. Initial Competency Examination Fee—\$25 (non-refundable)(per exam).

H. Re-Examination Fee—\$25 (non-refundable)(per re-exam).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 17:972 (October 1991), LR 26:1331 (June 2000), LR 33:

**§3029. Examinations**

A. Applicants for licenses are required to take an examination and obtain at least a grade of 70 percent in each appropriate section of the examination. Examinations may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability.

B. The technician's license examination will include the following:

1. a section on these rules and R.S. 40:1664 et seq.;

2. a section on the certifying, hydrostatic testing, inspecting, installing, integrating, maintaining and servicing of those types of systems or equipment for which the applicant desires to be licensed.

C. The standards used in examinations will be those applicable codes and standards as noted or as adopted by LAC-55:V:103 as follows.

1. Portable Fire Extinguisher/Fire Hose—NFPA 10, 101, 1961, and 1962.

2. Fixed Fire Suppression—NFPA 11, 11A (1999 Edition), 12, 12A, 17, 17A, 96, 101 and 2001;

3. Pre-Engineered Fixed Fire Suppression—NFPA 11, 11A (1999 Edition), 12, 12A, 17, 17A, 96, 101 and 2001.

4 Kitchen Fixed Fire Suppression—NFPA 17, 17A, 96 and 101.

5. Fire Alarm—NFPA 70 (only those articles that address fire alarm wiring), 72, 90A, 90B and 101.

6. Fire Alarm (non-required)—NFPA 70 (only those articles that address fire alarm wiring), 72, 90A, 90B and 101.

7. Fire Alarm Owner—NFPA 70 (only those articles that address fire alarm wiring), 72, 90A, 90B and 101.

8. DOT Hydrostatic Testing—CFR 49, NFPA 1961 and 1962.

D. Applicants who fail any section may file a reexamination application accompanied by the required fee and retake the examination.

E. A person whose license has been expired for two years or longer must take and pass another examination or approved training course prior to the issuance of a new license. No examination is required for a license holder whose license is renewed within two years of expiration.

F. A person who desires to take a competency test must first pre-register for that test with the State Fire Marshal's Office or the examination administrator designated by the State Fire Marshal, on a pre-registration form provided by this office or the examination administrator. The



pre-registration form and the required fee must be received by the office five working days prior to the examination date.

G. Results. Examination scores shall be mailed to the applicant's address as listed on the pre-registration form within 30 days after completing the test.

H. In lieu of an examination, the Office of the State Fire Marshal may accept an approved training course in which an examination is also given. The Office of the State Fire Marshal shall determine whether the training course is equivalent to the examination requirements and may audit the course, at no cost to the office, prior to final determination and periodically to ensure continued equivalency. Requests for acceptance of a training course to be equivalent must be made in writing and include the following:

1. course outline and syllabus;
2. length of course and specific time covered per topic;
3. example of test questions;
4. a copy of the certificate granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1331 (June 2000), LR 33:

### **§3031. Portable Fire Extinguishers/Fire Hoses**

#### **A. General Provisions**

1. Portable fire extinguishers and fire hoses shall be certified, hydrostatically tested, inspected, installed, maintained and serviced in compliance with NFPA 10 or 1961 or 1962, as adopted by the Office of the State Fire Marshal in LAC-55:V:103 or noted in these rules.

2. A service tag shall be securely attached by the licensee to the portable upon completion of any work.

3. When an extinguisher or fire hose is found to be in a condition which would not allow hydrostatic testing as described in NFPA 10 or 1961 or 1962, as adopted by the Office of the State Fire Marshal in LAC-55:V:103 noted in these rules, then the extinguisher or hose shall be red tagged or removed from service and destroyed in accordance with the applicable code or standard and these rules.

4. When an extinguisher is removed from the owner's premise for service, a replacement extinguisher shall be left of equal or greater rating on a one for one basis by the portable fire extinguisher/fire hose firm. Replacements need not be left where a building owner has fire extinguishers in excess of the required amount as required by NFPA 10 and NFPA 101 as adopted by the Office of the State Fire Marshal in LAC-55:V:103.

5. Anytime an extinguisher is opened for any reason then the appropriate maintenance procedures in NFPA 10 as adopted by the Office of the State Fire Marshal in LAC 55:V:103, shall be performed. If these procedures fulfill the requirements of a six-year maintenance then a record tag shall be affixed to the exterior of the extinguisher shell. Future six-year maintenance procedures shall begin from that date.

B. Record Tag. Each six year maintenance shall be recorded on a record tag consisting of a decal which shall be affixed (by a heatless process) on the exterior of the extinguisher shell. The decal shall either be metallic or of an equally durable material which does not corrode and which

remains affixed to the extinguisher for the required period. The decal shall also not fade, wash away, or otherwise become illegible. This paragraph supersedes labeling requirements set forth in NFPA 10 as adopted by the Office of the State Fire Marshal in LAC 55:V:103. Previous six-year maintenance record tags shall be removed when a new one is affixed. The record tag shall contain the following information:

1. year and month that the six-year maintenance was performed;
2. the name of the firm and its certificate number (must be pre-printed);
3. the initials of the person performing the maintenance and his/her license number.

#### **C. External Verification Collar**

1. In addition to any other tag required by these rules, an external verification collar shall be provided each time an extinguisher is opened up for any type of maintenance or for any purpose.

2. The standard external verification collar shall be on durable material. Self adhesive collars shall be permitted. Any color may be used with the exception of yellow or red.

#### **D. External verification collars shall bear the following:**

1. the certificate number of servicing firm (preprinted or printed in permanent ink);
2. name and license number of the person who performed the service (preprinted or printed in permanent ink);
3. month and year that the service was performed (to be punched).

E. A new external verification collar shall be provided for an extinguisher each time internal maintenance or recharging is performed or the extinguisher is opened for any other reason. A new external verification collar is not needed when a CO<sub>2</sub> extinguisher is recharged without opening the cylinder for inspection or on side cartridge type extinguishers.

F. External verification collars shall be affixed in the following manner:

1. any collar previously attached shall be removed prior to affixing a new collar;
2. the collar shall be placed around the exterior of the cylinder at or below the valve assembly.

G. The collar shall contain a single circular piece of uninterrupted material forming a hole of a size that will not allow the collar assembly to move over the neck of the cylinder unless the valve is completely removed. In no case shall the diameter of the opening exceed 1/4" the diameter of the cylinder's neck, measured directly below the valve assembly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 33:

### **§3033. Fixed Fire Suppression and Fire Detection and Alarm Systems and Equipment**

A. All new (complete or renovated) required fixed fire suppression systems including kitchen , pre-engineered and engineered systems, and fire detection and alarm systems shall be certified, hydrostatically tested, inspected, installed, integrated, maintained and serviced in compliance with the manufacturer's installation manuals, specifications, reviewed

plans and the applicable codes and standards adopted in LAC 55:V:103 or noted in these rules.

B. All existing required fixed fire suppression systems including kitchen, pre-engineered and engineered systems, and fire detection and alarm systems shall be certified, hydrostatically tested, inspected, integrated, maintained and serviced in an operational condition in accordance with the manufacturer's installation manuals, specifications, and per the inspection, testing and maintenance chapters of the applicable codes and standards adopted in L.A.C.55:V.103 or noted in these rules.

C. All non-required and non-conforming fixed fire suppression systems including kitchen, pre-engineered and engineered systems, and fire detection and alarm systems shall be certified, inspected, installed, integrated, maintained and serviced in compliance with the manufacturer's installation manuals, specifications, and deviations from the applicable codes and standards adopted in LAC 55:V.103 and these rules as authorized by the Office of the State Fire Marshal.

D. Non-required and/or non-conforming systems/equipment which only comprise of smoke or heat detectors connected to a burglar alarm system need not be inspected and certified annually by a certified fire alarm system firm. The owner of these systems must ensure these systems are functional and maintained in compliance with the manufacturer's specifications and NFPA 101 as adopted in LAC 55:V:103 and these rules.

E. All systems, except as noted in Subsection D above, shall be certified, hydrostatically tested, inspected, installed, integrated, maintained and serviced by certified firms having licensed personnel working within their certification and licensing discipline. In cases where disciplines cross over, the following reasoning will prevail.

1. Automatic detection and control systems will be certified, inspected, installed, integrated, maintained and serviced by firms certified to install fire detection and alarm systems and/or equipment unless it is just the section device associated with the actuation of a kitchen, pre-engineered or engineered system, in which case the fire detection and alarm firm is not needed. However, any connection of that kitchen, pre-engineered or engineered system to any alarm initiated system, to include but not limited to annunciator panels, HVAC shutdown and any other auxiliary feature controlled by the fire alarm system, then a firm with a Fire Alarm endorsement must certify, inspect, install, integrate, maintain or service the device.

2. Water supply and distribution piping systems as provided for in NFPA 25, as adopted in LAC-55:V.103 and these rules will be certified, inspected, installed, integrated, maintained and serviced by a firm with a Fire Sprinkler endorsement as regulated by R.S. 40:1664 et seq. Foam systems providing foam solution to fire monitors, portable nozzles, or fire trucks are excluded from this rule.

3. Alarm devices such as flow switches, pressure switches, low air pressure switches that are an integral part of a fire protection sprinkler piping system must be installed by a firm with a Fire Sprinkler endorsement as regulated by R.S. 40:1664 et seq., and connected to the fire alarm system by a firm with a Fire Alarm endorsement.

F. All non-required or non-conforming systems require written permission and possible review from the Office of the State Fire Marshal Plan Review Section prior to installation. Non-conforming systems shall be maintained in a functioning operational state as long as the system is within the facility. Non-required systems shall be maintained in accordance with the inspection, testing, and maintenance chapters of the applicable NFPA codes, standards and manufacturer's specifications governing that particular system as long as the system is within the facility.

G. Interconnected smoke or heat detector systems as required by the NFPA 101, as adopted by the Office of the State Fire Marshal in LAC-55:V:103 and these rules, or as authorized by this office must be inspected, installed, integrated, maintained and serviced by either a certified fire detection and alarm firm or an electrical contractor as provided by R.S. 40:1664 et seq. These systems must be submitted to this office's Plan Review Section for review prior to installation.

H. Each heat detector (fusible link) employed within a fixed fire suppression system shall have the manufacturer date marked on the detector. The date shall reflect the current or previous calendar year when installed.

I. External Verification Collar

1. In addition to any other tag required by these rules, an external verification collar shall be provided each time a fixed fire suppression agent cylinder is opened for any purpose.

2. The external verification collar shall be on durable material. Self adhesive collars shall be permitted. Any color may be used with the exception of yellow or red.

3. External verification collars shall bear the following:

a. the certificate number of servicing firm, preprinted or printed in permanent ink;

b. name and license number of the person who performed the service, preprinted or printed in permanent ink;

c. month and year that the service was performed. This information must be punched.

J. A new external verification collar is not needed in the following circumstances:

1. when a CO<sub>2</sub> fixed fire suppression cylinder is recharged without opening the cylinder for inspection;

2. cartridge operated type of systems.

K. External verification collars shall be affixed in the following manner:

1. any collar previously attached shall be removed prior to affixing a new collar;

2. the collar shall be placed around the exterior of the cylinder at or below the valve assembly.

L. The collar shall contain a single circular piece of uninterrupted material forming a hole of a size that will not allow the collar assembly to move over the neck of the cylinder unless the valve is completely removed. In no case shall the diameter of the opening exceed 1/4" the diameter of the cylinder's neck, measured directly below the valve assembly.

M. The office may exempt additional cylinders from this requirement if good cause is shown that the requirement is impractical or overly burdensome.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1332 (June 2000), LR 33:

### **§3035. Hydrostatic Tests**

A. All hydrostatic testing shall be conducted in compliance with U.S. Department of Transportation hydrostatic testing requirements, or, where applicable, in compliance with the appropriate NFPA code or standard as adopted by the Office of the State Fire Marshal in LAC 55:V.103 and these rules. The owner shall be informed of a needed test or replacement.

#### B. Recording of Tests

1. High Pressure Cylinders. High pressure cylinders and cartridges shall be stamped in accordance with the applicable NFPA and D.O.T. standards as adopted by the Office of the State Fire Marshal in LAC 55:V.103 and these rules.

2. Low Pressure Cylinders. Each hydrostatic test shall be recorded on a record tag consisting of a decal which shall be affixed by a heatless process on the exterior of the extinguisher cylinder. The decal shall either be metallic or of an equally durable material which does not corrode and which remains affixed to the extinguisher for the required period. The decal shall also not fade, wash away, or otherwise become illegible.

3. The record tag shall contain the following information, which, exception for Subparagraphs c and d hereof, must be hand punched:

- a. year and month that the hydrostatic test was performed;
- b. test pressure used;
- c. name of the firm and its certificate number (must be pre-printed);
- d. initials of the person performing the maintenance and his license number.

4. Previous hydrostatic test record tags shall be removed when a new one is affixed.

5. The licensed firm shall keep a permanent record of each hydrostatic test performed for a minimum of five years. The record shall include as a minimum the following:

- a. date of test;
- b. cylinder serial number;
- c. model number;
- d. cylinder size;
- e. test pressure;
- f. visual inspection result;
- g. cylinder disposition;
- h. initials of the person performing the test;
- i. owner of cylinder.

6. Fire Hoses. Records of fire hose tests shall comply with the latest edition of NFPA 1962 as enumerated in LAC 55:V.103 and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1333 (June 2000), LR 33:

### **§3037. Installation Tags**

A. Upon installation of any new fire protection system, the system shall have a tag permanently affixed to the panel for fire detection and alarm and fixed fire suppression

systems. On kitchen fixed fire suppression systems, the tag shall be permanently affixed to the side of the suppression agent cylinder. This requirement does not apply to portable fire extinguishers. The installation tag shall be a minimum of 2 3/4 inches by 2 3/4 inches. Maximum size cannot exceed 5 inches by 5 inches. The tag shall be white in color and have a self adhesive backing. The following information and wording shall be required to be preprinted on the front side of the tag:

1. **"DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL"** (all capital letters, in bold type);
2. installation tag;
3. installation date;
4. firm's name;
5. firm's certificate number;
6. technician's name;
7. technician's license number;
8. technician's signature;
9. NFPA Code edition system was installed under;
10. plan review or exemption number;
11. serial or model number of panel and/or cylinder, if applicable.

B. All tags shall have a signature line for the technician to sign the tag upon completion of the work. No preprinted signatures are permitted. Technicians must sign the tag; initials are not permitted. Other information to be completed on the tag may be either handwritten or preprinted. Apprentices are not permitted to sign tags.

C. If after initial installation a cylinder or panel is replaced for any reason, a new installation tag shall be completed and attached as above, noting the appropriate changes in information.

D. If an installation tag is replaced, hand write "REPLACEMENT" after the installation date. If the original installation date is not known, the date of replacement can be used.

E. Copies of certificates of compliance required to be completed by this office shall be attached to the system in a plastic pocket pouch/sleeve or given to the owner for filing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1334 (June 2000), LR 33:

### **§3039. Service Tags, Yellow Tags, Red Tags, and Stenciling**

A. All portable fire extinguishers, fire hoses, fixed fire suppression equipment and/or systems, and fire detection and alarm equipment and/or systems shall be tagged or stenciled in the following manner.

#### B. Service Tags

1. A service tag shall be completed and attached to a portable fire extinguisher, fire hoses, a fixed fire suppression system, and a fire detection and alarm system, after it has been certified, hydrostatically tested, inspected, installed, maintained or serviced indicating all work that has been done. Fire hoses shall be stenciled in ink after being hydrostatically tested.

2. Service tags shall be green in color for fixed fire suppression systems, and fire detection and alarm systems. Service tags may be of any color but yellow or red for portable fire extinguishers and fire hoses. Fire hoses shall be stenciled in a contrasting color to that of the hose.

3. The service tag shall be attached at the following locations.

a. For portable fire extinguishers, the tag shall be attached at the valve/neck assembly or gauge. It shall not be attached on the hose.

b. For fixed fire suppression systems, the tag shall be attached at each cylinder and each control panel.

c. For kitchen fixed fire suppression systems, the tag shall be attached at each cylinder and each manual pull station.

d. For fire detection and alarm systems, the tag shall be attached at each control panel, (Booster panels that are part of a fire detection and alarm system need not be tagged.)

e. For fire hoses, the tag shall be located at the female coupling.

f. For fire hoses, the stencil shall be located at both couplings.

4. The service tag shall be attached in such a way as to not hamper the actuation and operation of the equipment or system.

5. A service tag shall be attached on all systems or equipment found to be in proper working condition and which are found to be in an operational condition per the inspection, testing and maintenance chapters of the applicable NFPA codes and standards. This tag shall be used for new installations and shall be in addition to the installation tag provided for in these rules. This tag shall also be used for all service and maintenance where the system is found to meet the above conditions.

6. Service tags must contain all of the information listed below:

a. **"DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL"** (all capital letters in bold face type);

b. servicing firm's name, address and telephone number;

c. servicing firm's State Fire Marshal certificate number;

d. servicing technician's name and State Fire Marshal license number to be printed on tag either at the time of service or preprinted;

e. servicing technician's signature to be signed at time of service (no preprinted signatures nor initials are permitted, except that tags attached to portable fire extinguishers may use preprinted signatures; apprentices are not permitted to sign tags);

f. day, month and year in which service was performed (must be punched through service tag at designated marks for day, month and year; designated marks for day, month and year shall only be punched once per tag);

g. type of work performed, only installation, certification, and service shall be noted on tag for type of work performed (must be punched through the service tag).

i. "Installation" shall be punched on the tag when the fire protection system or equipment is initially placed into service or after an addition or extension to the system has been made. Punching "Installation" indicates the initial certification of the system or equipment has been completed;

ii. "Certification" shall be punched on the tag when the fire protection system or equipment has its six month or annual inspection or maintenance. Punching

"Certification" indicates that any required service performed to the system or equipment at the time has been completed;

iii. "Service" shall be punched on the tag when the fire protection system or equipment is repaired or replaced to ensure proper operation in between required certification periods;

iv. specifics as to the type of work performed shall be noted on rear of tag, (i.e., new installation, annual certification, annual maintenance, recharged cylinder, changed smoke detector, repaired pull station, etc);

h. serial number of portable fire extinguisher, fixed fire suppression system cylinder and/or panel and fire detection and alarm system control panel;

i. owner of system and address of owner (to be noted on rear of tag).

7. Other information may be permitted on the tag after a review and approval by the fire marshal. A request for additional information shall be made to the fire marshal in writing with a sample tag indicating the requested additions.

8. Stenciled information on fire hoses shall include the test pressure, date of test and firm license number.

#### B. Partial Impairment Tags (Yellow Tags)

1. All firms engaged in the activity of certifying, hydrostatic testing, inspecting, installing, integrating, maintaining or servicing of portable fire extinguishers, fixed fire suppression systems, and/or fire detection and alarm systems shall be allowed to have a partial impairment tag, to be yellow in color, which is to be used when minor deficiencies are found on the equipment or system. The partial impairment tag is in addition to the requirement of having a service tag and impairment tag.

2. A partial impairment tag may be placed on all equipment or systems in which there is a deficiency with the equipment or system but where the equipment or system is still functional. This would include situations where routine service is needed but has not been approved by the owner of the equipment or system as well as systems which are required to be off-sited monitored but monitoring is not provided.

3. A partial impairment tag shall not remain on equipment or a system for more than 60 days. If the problem is not corrected after 60 days the certified firm shall be required to notify, in writing, the Office of the State Fire Marshal Inspection Section.

4. Partial impairment tags must contain all of the information listed below:

a. **"DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL"** (all capital letters in bold face type);

b. servicing firm's name, address and telephone number;

c. servicing firm's State Fire Marshal certificate number;

d. servicing technician's name and State Fire Marshal license number to be printed on tag either at the time of service or preprinted;

e. servicing technician's signature to be signed at time of inspection (no preprinted signatures nor initials are permitted; (apprentices are not permitted to sign tags);

f. day, month and year in which the impairment was found (to be punched through service tag at designated marks for day, month and year; designated marks for day, month and year shall only be punched once per tag);

g. type of impairment found (to be hand written on rear of tag); If additional space is needed to note the impairments, then multiple tags shall be used noting 1 of 2, 2 of 2, etc.;

h. serial number of portable fire extinguisher or fixed fire suppression system cylinder and/or panel, fire detection and alarm system control panel;

i. owner of system and address of owner (to be noted on rear of tag).

#### C. Impairment Tags (Red Tags)

1. All firms engaged in the activity of certifying, hydrostatic testing, inspecting, installing, integrating, maintaining or servicing of portable fire extinguishers, fixed fire suppression systems, and/or fire detection and alarm systems shall have an impairment tag, to be red in color, which is to be used when major deficiencies are found on these systems or equipment.

2. An impairment tag shall be placed on all fixed fire suppression or fire detection and alarm systems upon discovery that the system or equipment is impaired to the point that life safety is at risk or to the point that the automatic or manual discharge system will be prevented from functioning as intended.

3. Portable fire extinguishers shall be red tagged when the equipment is inoperable for any reason.

4. Impairment tags shall also be placed on any equipment or system where life safety is in imminent danger.

5. A red tag is not required to be placed on a fire hose which fails hydrostatic testing, but rather, the fire hose shall be removed from service.

6. Written notice shall be made to the owner and to the Office of the State Fire Marshal Inspection Section by the certified firm as soon as is practically possible but shall not exceed two working days after the system or equipment is red tagged. Notification to the Office of the State Fire Marshal is not needed for fire hoses removed from service. Written notification can be by electronic mail or facsimile. The Office of State Fire Marshal shall provide a form for notification. Additional notification (written or verbally) should be made to the local fire department when a system is red tagged.

7. Impairment tags must contain all of the information listed below:

a. **"DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL"** (all capital letters in bold face type);

b. servicing firm's name, address and telephone number;

c. servicing firm's State Fire Marshal certificate number;

d. servicing technician's name and State Fire Marshal license number to be printed on tag either at the time of service or preprinted;

e. servicing technician's signature to be signed at time of inspection (no preprinted signatures nor initials are permitted; (apprentices are not permitted to sign tags);

f. day, month and year in which the inspection was performed (to be punched through service tag at designated marks for day, month and year; designated marks for day, month and year shall only be punched once per tag);

g. type of impairment found (to be hand written on rear of tag). If additional space is needed to note the

impairments, then multiple tags shall be used noting 1 of 2, 2 of 2, etc.;

h. serial number of portable fire extinguisher, fixed fire suppression system cylinder and/or panel, or fire detection and alarm system control panel;

i. owner of system and address of owner (to be noted on rear of tag).

8. Notification of fire protection equipment/systems inspections where no deficiencies are found need not be sent to the Office of the State Fire Marshal unless specifically requested.

D. Written Notification. The following information is required to be sent when written notification is made to the Office of the State Fire Marshal Inspection Section:

1. name, address, and telephone number of the owner of the system;

2. name, address, telephone number, and certificate number of the firm noting the impairment;

3. name and license number of the technician who did the inspection;

4. type of system (manufacturer and model number should also be included);

5. code, inspection chapter and year edition firm used for inspection;

6. reason for the impairment (Note: a copy of the inspection or service report shall be included); and

7. date system or equipment was red or yellow tagged.

E. Non-Required and/or Non-Conforming Systems. Where a fire protection system is non-required or permitted to be installed in a non-conforming state by this office or is both non-required and non-conforming then the following additions shall be made to the guidelines set forth in this section.

1. Each firm shall stamp or write on the installation tag and/or service tag one of the following statement as applicable:

a. "NON-REQUIRED SYSTEM"; or

b. "NON-CONFORMING SYSTEM"; or

c. "NON-REQUIRED/NON-CONFORMING SYSTEM".

2. Such print or stamp shall be in all capital letting and be written or stamped so as to not obscure other information provided on the tag.

3. This does not supersede the requirements to place a yellow or red tag on a system that is impaired in any way.

#### F. Miscellaneous Provisions

1. On all fixed fire suppression and fire detection and alarm systems, a plastic pocket pouch/sleeve shall also be attached to the panel, or tank, as appropriate, where all tags shall be maintained for a period of one year after the system's annual inspection. For kitchen fixed fire suppression systems, the pocket pouch/sleeve shall be attached at or near a manual pull station. Upon a new annual or six month certification, all previous service tags may be removed and given to the owner to keep on file. This requirement does not apply to portable fire extinguishers or fire hoses.

2. All tags must be card stock, plastic, vinyl, tyevak or metal in order to maintain the running record for the system. One sided or self adhesive service tags are not permitted except for fire protection equipment or systems in areas subject to adverse conditions. Self adhesive tags shall contain all of the information required on hanging tags.

3. All tags shall be 5 1/4 inches in height and 2 5/8 inches in width.

4. Firms shall have their tags printed and one forwarded to the State Fire Marshal's Licensing Section for approval and incorporation in the firm's file.

5. Tags may be removed only by licensed employees of a certified firm or employees of the State Fire Marshal's Office and certified fire prevention bureaus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1334 (June 2000), LR 33:

### **§3041. Prohibited Acts and Equipment**

A. The following acts are prohibited and shall be considered grounds for administrative action to be taken against firms, persons and/or employees committing such:

1. charging a customer for work that was not performed;

2. misrepresenting oneself and/or one's firm to a customer, prospective customer or to employees of the state fire marshal, his designated representative or other public official;

3. impersonating the state fire marshal, his designated representative or any other public official;

4. intimidating or coercing a customer;

5. certifying, hydrostatically testing, inspecting, installing, integrating, maintaining or servicing fire protection systems and/or equipment contrary to plans submitted for review, applicable NFPA codes, standards, and/or manufacturer's specifications without specific written permission from the Office of the State Fire Marshal;

6. falsifying an application or any other document submitted to obtain a certificate or license or other documentation requested by or submitted to the Office of the State Fire Marshal;

7. falsifying tags, labels, stenciling, inspection reports, invoices, system reports, and/or other documents;

8. working an apprentice, or as an apprentice, without direct supervision by a technician licensed to perform the work being done and licensed to the same firm;

9. working an employee without the appropriate endorsement of license;

10. working without the appropriate endorsement of firm certificate or license;

11. working with an expired firm certificate or license;

12. failing to notify the Office of the State Fire Marshal of any changes that affect licensure;

13. contracting to a firm or person who is not properly certified or licensed through the Office of the State Fire Marshal to perform acts regulated by the provisions of R.S. 40:1664 et seq. or these rules;

14. failing to adhere to the tagging and/or notification policies of the Office of the State Fire Marshal;

15. installing a fixed fire suppression system, or fire detection and alarm system prior to submitting plans and required documentation and receiving authorization to install such system from the Plan Review Section of the Office of the State Fire Marshal;

16. failing to possess the equipment, tools, NFPA codes, standards or manufacturer's U.L. listed installation and service manuals to properly certify, hydrostatic test,

inspect, install, integrate, maintain or service the systems or equipment for which a firm is certified;

17. failing to adhere to all applicable laws and rules governing fire protection systems and/or equipment as promulgated by the Office of the State Fire Marshal;

18. engaging in false, misleading or deceptive acts or practices;

19. aiding and abetting an unlicensed person or firm in the certifying, hydrostatic testing, inspecting, installing, integrating, maintaining or servicing of a portable fire extinguisher, fire hose, fixed fire suppression equipment and/or system, or fire detection and alarm equipment and/or system.

B. The following portable fire extinguishers and cylinders are prohibited from use:

1. carbon tetrachloride portables;

2. portable fire extinguishers or fixed fire suppression system cylinders without labels of an approved testing laboratory or name plates:

a. exception: a portable fire extinguisher or fixed fire suppression system cylinder in an industrial facility, whose original label or name plate has been removed for refurbishing, may have a manufacturer approved replacement label or name plate reattached if maintenance records, as provided below, are maintained;

b. maintenance records shall include the following:

i. manufacturer;

ii. type and size of the portable fire extinguisher or fixed fire suppression system cylinder;

iii. serial number or unique tracking number of portable fire extinguisher or fixed fire suppression system cylinder; and

iv. dates and types of service performed;

3. any portable fire extinguisher or fixed fire suppression system cylinder prohibited by the adopted NFPA codes and standards enumerated in LAC 55:V:103 and these rules;

4. any fire protection equipment or system which has been recalled from the manufacturer or has had its listing from an approved testing laboratory removed;

5. systems or portables in which replacement parts are no longer available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1336 (June 2000), LR 33:

### **§3043. Enforcement**

A. The State Fire Marshal or his designated representative, shall make, or cause to be made, from time to time, inspections of a firm's physical locations, vehicles or job sites to verify required certificates, employee lists, employee licenses, business records and insurances, equipment, tools, NFPA codes, standards and manufacturer's manuals and work/service performed, and as circumstances dictate, to determine that portable fire extinguisher, fire hose, fixed fire suppression and fire detection and alarm firms and their employees are engaging in activity in accordance with the requirements of R.S. 40:1664 et seq., and these rules.

B. The State Fire Marshal shall investigate all complaints of alleged violations of R.S. 40:1574 et seq., 40:1664 et seq., and these rules. Complaints of alleged violations shall be made in writing to the Licensing Section

of the State Fire Marshal's office. The office shall make available a complaint form to be used as needed. Penalties shall be administered to those firms and /or employees found to have violated these laws and/or rules. Proposed administrative penalty letters shall act as official notification of alleged violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1337 (June 2000), LR 33:

### §3045. Administrative Actions

A. The State Fire Marshal may refuse the issuance or renewal of, suspend, or revoke a certificate of registration, or license and impose administrative penalties, if, after notice and hearing, as provided for by the Administrative Procedures Act, it is found that a person, certified firm, or licensee or an applicant for registration, or license, failed to comply with the provisions of R.S. 40:1664 et seq., or these rules.

1. Offenses. The following categories shall denote classification of offenses for persons, firms and employees for determining the penalty to be imposed.

a. Minor:

- i. failing to notify the Office of the State Fire Marshal of any changes that affect licensure;
- ii. failing to adhere to the tagging and/or notification policies of the Office of the State Fire Marshal;
- iii. working with an expired (31-45 days) license, or certificate of registration;
- iv. failing to properly display a firm certificate or an individual license.

b. Serious:

- i. misrepresenting oneself and/or one's firm to a customer, prospective customer or to employees of the State Fire Marshal, his designated representative or other public official;
- ii. certifying, hydrostatically testing, inspecting, installing, integrating, maintaining or servicing fire protection systems and/or equipment contrary to plans submitted for review, applicable NFPA codes, standards, and/or manufacturer's specifications without specific written permission from the Office of the State Fire Marshal;
- iii. working an apprentice, or as an apprentice, without direct supervision by a technician licensed to perform the work being done and licensed to the same firm;
- iv. working an employee without the appropriate endorsement of license;
- v. working without the appropriate endorsement of firm certificate or license;
- vi. working with an expired (46-60 days) license or firm certificate;
- viii. contracting to a firm or person who is not properly certified or licensed through the Office of the State Fire Marshal to perform acts regulated by the provisions of R.S. 1664 et seq. or these rules;
- ix. failing to possess the equipment, tools, NFPA codes, standards or manufacturer's U.L. listed installation and service manuals to properly certify, hydrostatic test, inspect, install, integrate, maintain or service the systems or equipment for which a firm is certified;
- x. committing five or more Minor offenses within a three year period.

c. Major:

- i. charging a customer for work that was not performed;
- ii. impersonating the state fire marshal, his designated representative or any other public official;
- iii. intimidating or coercing a customer;
- iv. falsifying an application or any other document submitted to obtain a certificate or license or other documentation requested by or submitted to the Office of the State Fire Marshal;
- v. falsifying tags, labels, stenciling, inspection reports, invoices and/or other documents;
- vi. working without any or with a suspended firm certificate of registration or license;
- vii. working an employee with a suspended license;
- viii. aiding and abetting an unlicensed person or firm in the certifying, hydrostatic testing, inspecting, installing, integrating, maintaining or servicing of a portable fire extinguisher, fire hose, fixed fire suppression equipment and/or system, fire detection and alarm equipment and/or system;
- ix. installing a fixed fire suppression system, or fire alarm and detection system prior to submitting plans and required documentation and receiving authorization to install such system from the Plan Review Section of the Office of the State Fire Marshal;
- x. committing three or more serious offenses within a three year period;
- xi. engaging in false, misleading or deceptive acts or practices.

2. Penalties. The following fine schedule shall be used to assess fines to persons, firms, and/or employees who violate the laws and rules governing the portable fire extinguisher, fire hose, fixed fire suppression and fire detection and alarm industries. Penalties will be imposed to persons, firms and/or employees based on the classification of offense. Each classification of offense will have a minimum and maximum fine shown and any other administrative penalty that may be imposed.

a. Firms and/or Persons

- i. Minor—\$50 fine to \$250 fine and/or official warnings may be imposed.
- ii. Serious—\$250 fine to \$1,000 fine and/or suspensions of up to 90 days may be imposed.
- iii. Major—\$1,000 fine to \$5,000 fine and/or suspensions from 91 to 365 days may be imposed and/or revocation of certificate may be imposed.

b. Employees and/or Persons

- i. Minor—\$10 fine to \$50 fine and/or official warnings may be imposed.
- ii. Serious—\$50 fine to \$500 fine and/or suspensions of up to 90 days may be imposed.
- iii. Major—\$500 to \$5,000 fine and/or suspensions from 91 to 365 days may be imposed and/or revocation of license may be imposed.

c. The State Fire Marshal may deviate from this fine schedule where circumstances and/or evidence warrant a more stringent or more lenient penalty.

d. In lieu of fine payments, the State Fire Marshal may require remedial or additional training be obtained by those found in violation.

e. Those offenses not enumerated in this list shall receive penalties for violations of similar nature.

f. The Office of the State Fire Marshal may also pursue criminal charges or injunctive relief for any of the above enumerated offenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1337 (June 2000), LR 33:

### §3047. Severability

A. If any provision of these rules or the application thereof to any firm, person, employee or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these rules which can be given effect without the invalid provisions or application. To this end, all provisions of these rules are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1338 (June 2000), LR 33:

### §3049. Adopted Standards

A. The office adopts by reference in their entirety those copyrighted codes or standards enumerated in LAC 55:V.103 published by and available from the National Fire Protection Association, Inc. (NFPA), Batterymarch Park, Quincy, Massachusetts, 02268. A copy of the codes and standards shall be kept available for public inspection in the Office of the State Fire Marshal. In addition to those listed standards, the following shall also be adhered to as applicable:

1. ASME/ANSI A17.1—Safety Code for Elevators and Escalators;
2. ASME/ANSI A17.3—Safety Code for Existing Elevators and Escalators;
3. ASME/ANSI A117.1—Specifications for Handicapped Accessibility;
4. ADAAG—American Disability Accessibility Act Guidelines;
5. United States Department of Transportation;
6. Code of Federal Regulations 49.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1339 (June 2000), LR 33:

### §3051. National Recognized Testing Laboratory

A. The criteria for recognition by the Office of State Fire Marshal as a "Nationally Recognized Testing Laboratory" shall be as follows. The applicant laboratory's portable fire extinguisher testing standards shall meet or exceed the best listed national standards:

1. Fire Test Standards—ANSI/UL 154, CAN4-S503-M83
2. Performance Standards
  - a. CO<sub>2</sub> Types—ANSI/UL 154, CAN4-S503-M83
  - b. Dry Chemical Types—ANSI/UL 299, ULC-S504
  - c. Halon Types—ANSI/UL 1093, ULC-S504
  - d. 2-1/2 Gallon Stored Pressure Water Types—ANSI/UL 626

e. Factory Follow-Up on Third Party Certified Portable Fire Extinguishers—ANSI/UL 1803

f. Foam Types—ANSI/UL 8

B. The applicant laboratory shall maintain a follow-up inspection program to confirm that the manufacturer is providing the controls, inspections, and tests necessary to assure that all current manufactured extinguishers will meet the laboratory's testing standards. This follow-up inspection shall occur no less than once each six months for the first two years and once each year thereafter.

1. The application by a testing laboratory for recognition by the State Fire Marshal as a "nationally recognized testing laboratory" shall not be on any particular form but shall include all of the information and material requested in Subparagraphs below:

a. the address and telephone number of the main facility and all branch offices;

b. a current organizational chart showing the relationship between administration, operation, and quality control;

c. resumes of the education and experience of key personnel;

d. a floor plan of the main facility and all branch offices indicating location of the equipment used for testing portable fire extinguishers;

e. a list of all equipment used to test portable fire extinguishers, identified by manufacturer, model number and serial number; detailed plans and specifications shall be submitted on any testing equipment fabricated by the applicant;

f. procedures for selecting, receiving, storage, handling, and shipping of test specimens;

g. test standards and procedures most frequently used;

h. method and frequency of test equipment calibration;

i. procedure for safekeeping of records and files;

j. copies of all data sheets and test report forms;

k. facsimiles of all contracts executed between the testing laboratory and portable extinguisher clients;

l. procedure for periodic updating of the report;

m. method of distributing test reports and certifications, including an indication of who may obtain copies of the final reports and how the reports may be obtained;

n. a copy of the laboratory's partnership agreement, if a partnership, or of the articles of incorporation, if a corporation, and a copy of any by-laws;

o. a list of all the portable fire extinguishers presently listed by the testing laboratory showing the manufacturer and the model number;

p. copies of the test reports on all listed portable extinguishers which must be in sufficient detail to provide for complete verification and evaluation of the operations and objectives, and must include the signature of personnel performing the test and must also include the name of the supervisory engineer;

q. whether the applicant testing laboratory has been recognized as a "nationally recognized testing laboratory" by any other state or by an organized, voluntary recognized organization such as the National Voluntary Laboratory



Association Program and whether recognition by any other state or organization has been denied;

r. how long the applicant testing laboratory has tested portable extinguishers;

s. a notarized statement of independence which shall state that, with reference to the laboratory's testing of portable fire extinguishers:

i. there are no managerial affiliations with any producer, supplier, or vendor;

ii. changes in any major test equipment;

iii. establishment of a new branch office or facility at which portable fire extinguishers are to be tested;

iv. changes in principal officers, key supervisory personnel, or key testing personnel in the company.

B. This office approves Underwriters Laboratories, Inc., Factory Mutual Research Corporation and the United States Testing Company, Inc., as nationally recognized testing laboratories for the purpose of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1339 (June 2000), LR 33:

### §3053. Equipment and Facilities

A. Each certified firm location shall be required to possess the equipment, tools, NFPA codes, standards and manufacturer's UL listed installation and service manuals necessary to properly certify, hydrostatic test, inspect, install, integrate, maintain or service the systems or equipment for which it is certified. If such work is performed from a vehicle, then the vehicle shall be required to possess the necessary equipment, tools, NFPA codes, standards and manuals. Required codes, standards and manuals may be either in print or in an electronic format.

B. The following equipment and code books shall be required depending upon the firm's certification endorsement.

#### 1. Portable Fire Extinguisher/Fire Hose:

a. service and impairment tags;

b. six year maintenance and hydrostatic test labels;

c. external verification collars;

d. stenciling tools and supplies;

e. tamper seals (14 lbs. maximum breakage). the tamper seal shall reflect the current or previous calendar year date when installed;

f. test apparatus including appropriate adapters, fittings and tools;

g. facilities for leak testing of pressurized extinguishers;

h. approved equipment for drying cylinders;

i. approved closed recovery unit;

j. department of agriculture approved scales for unit measure (for shop or vehicle). Scales shall be certified annually by the Department of Agriculture or its designated agent;

k. field and cartridge scales;

l. appropriate recharge agents and fill funnels;

m. cylinder inspection light;

n. dry nitrogen cylinders, regulator and calibrated gauges for pressurizing cylinders;

o. supply of spare parts for respective manufacturers and type of fire extinguishers serviced;

p. proper wrenches with non-serrated jaws or valve puller (hydraulic or electric);

q. continuity tester and labels;

r. calibrated gauges and gauge tester;

s. working hydrostatic test pump for testing cylinders and fire hose, with flexible connection, check valves and fittings;

t. adequate safety cage for hydrostatic testing of low pressure cylinders.

#### 2. Fixed, Pre-Engineered or Kitchen Fire Suppression:

a. service, partial impairment (optional) and impairment tags;

b. installation tags;

c. six year maintenance and hydrostatic test labels;

d. external verification collars;

e. tamper seals (14 lbs. maximum breakage). The tamper seal shall reflect the current or previous calendar year date when installed;

f. test apparatus including appropriate adapters, fittings and tools;

g. facilities for leak testing of pressurized cylinders;

h. approved equipment for drying cylinders;

i. approved closed recovery unit;

j. Department of Agriculture approved scales for unit measure. Scales shall be certified annually by the Department of Agriculture or its designated agent;

k. appropriate recharge agents and fill funnels;

l. cylinder inspection light;

m. dry nitrogen cylinders, regulator and calibrated gauges for pressurizing cylinders;

n. supply of spare parts for respective manufacturers and type of systems serviced;

o. proper wrenches with non-serrated jaws or valve puller (hydraulic or electric);

p. wire cutters;

q. pipe threader;

r. pipe reamer;

s. flaring tools;

t. pipe wrenches;

u. calibrated gauges and gauge tester;

v. working hydrostatic test pump, with flexible connection, check valves and fittings;

w. adequate safety cage for hydrostatic testing of low pressure cylinders;

x. manometer (for engineered systems only);

y. fan test equipment or have access to such equipment through contract to another firm (for engineered systems only);

z. halon recovery equipment or have access to such equipment through contract to another firm (for Engineered Systems only).

#### 3. Fire Alarms:

a. service, partial impairment (optional) and impairment tags;

b. installation tags;

c. manufacturer approved smoke detector sensitivity or calibration testing equipment or have access to such equipment through contract to another firm;

d. multimeter;

e. sound level meter.

#### 4. DOT Hydrostatic Testing:

a. adequate hydrostatic test equipment for high pressure testing and calibrated cylinder including but not limited to appropriate adapters, fittings and tools;

b. adequate equipment for test dating high pressure cylinders (over 900 PSI). Die stamps must be a minimum of 1/4 inch;

c. clock with sweep second hand on or close to hydrostatic test apparatus;

d. equipment for drying cylinders;

e. cylinder inspection light;

f. proper wrenches with non-serrated jaws or valve puller (hydraulic or electric).

5. Code Books (latest edition as enumerated in LAC 55:V.103 and these rules)

a. Portable Fire Extinguisher/Fire Hose—NFPA 10, 101, 1961 and 1962.

b. Fixed Fire Suppression—NFPA 11, 11A, 12, 12A, 17, 17A, 96, 101 and 2001.

c. Pre-Engineered—NFPA 11, 11A, 12, 12A, 17, 17A, 96, 101 and 2001.

d. Kitchen Suppression—NFPA 17, 17A, 96 and 101.

e. Fire Alarm—NFPA 70 (only those articles that address fire alarm wiring), 72, 90A, 90B and 101.

f. Fire Alarm (non-required)—NFPA 70 (only those articles that address fire alarm wiring), 72, 90A, 90B and 101.

g. Fire Alarm Owner—NFPA 70 (only those articles that address fire alarm wiring), 72, 90A, 90B and 101.

h. DOT Hydrostatic Testing—CFR 49, NFPA 1961 and 1962.

C. The State Fire Marshal or his representative may inspect a firm's physical location(s) or vehicle(s) to ensure the proper equipment, tools, NFPA codes, NFPA standards, manufacturer's UL listed installation and service manuals and business records and insurances are possessed by the firm. Firms must possess all applicable manufacturers' installation and service manuals for the systems and/or equipment it services.

D. Business records shall include, but not be limited to, invoices, work orders, service reports, payroll records, federal and state tax information for employees, occupational licenses, income tax filings, property tax notifications and filings, utility records, certificates of insurance for general liability and workmen compensation coverage and workers compensation reports and/or filings.

E. The State Fire Marshal or his representative may require that a firm or its employee(s) demonstrate a proficiency to use the necessary equipment to properly certify, hydrostatically test, inspect, install, integrate, maintain or service portable fire extinguishers, fixed fire suppression systems/equipment and fire detection and alarm systems/equipment. Proficiency shall be deemed to be achieved if the system or equipment complies with the applicable NFPA code or standard and/or manufacturer's specifications.

F. For those firms or their employee(s) which do not possess the proper equipment, tools and manuals or who fail to demonstrate the ability to properly perform the required work, then an order of correction shall be made to the contractor or his employee to obtain the required equipment, tools, NFPA codes, standards or manual or to obtain

additional training within a 30-day period. Another inspection shall be conducted by the State Fire Marshal or his representative to verify compliance with the order of correction. Good cause must be shown if proficiency is not shown or the required equipment, tools, NFPA codes, standards or manuals are not obtained by the time of the second inspection. Additional time may be granted for good cause. If good cause is not shown, then administrative action may be pursued.

G. The office may specifically enumerate additional required equipment or business records at a later date should it be deemed necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1339 (June 2000), LR 33:

### **§3055. Plan Review**

A. No system requiring plan submittal in accordance with R.S. 40:1574 et seq., shall be installed or integrated prior to submitting plans with required documentation and receiving authorization to install such system from the Plan Review Section of the Office of the State Fire Marshal. However, the installation of wiring only for fire detection and alarm systems shall be permitted upon receipt of plans by the Office of the State Fire Marshal, Plan Review Section. No fire detection devices or panels shall be installed prior to review or written authorization by the Office of the State Fire Marshal.

B. Only listed qualifiers of a firm shall be listed on applications for full plan review or exemption to full plan review. Additionally, any correspondence regarding a submittal, to include but not be limited to, telephone, email or written correspondence, shall only be through a listed qualifier of the firm, owner of the firm, a professional of record or owner of the building.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:273 (March 1991), amended LR 26:1340 (June 2000), LR 33:

### **§3057. Electrical Contractors**

A. All electrical contractors who have met all requirements and passed a prescribed written examination based upon National Fire Protection Association (NFPA) Code 70, the National Electrical Code, that has been given either by a recognized political subdivision of the State of Louisiana or by the State Licensing Board for Contractors, shall be authorized to install fire detection and alarm components or interconnected smoke detectors in accordance with manufacturer's specifications and applicable National Fire Protection Association (NFPA) codes which are listed in Section 3053 of this Chapter.

B. The certifying, inspecting, integrating, maintenance and servicing of a fire detection and alarm system shall be performed only by a fire detection and alarm firm that is certified, and its employees licensed with the Office of the State Fire Marshal to perform such work.

C. Electrical contractors shall be limited to the installation of wiring, conduit raceways, and/or devices for fire detection and alarm systems. All connections or final terminations made within the alarm control panel must be

made by licensed employees of the fire detection and alarm firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of State Fire Marshal, LR 26:1340 (June 2000), LR 33:

### §3059. Miscellaneous Provisions

A. Marking of Vehicles. All service vehicles owned or operated by firms or their employees used for regulated activities, as defined by R.S. 40:1664 et seq., and these rules shall have the firm name and firm certificate number permanently inscribed, painted, stenciled or affixed by magnetic means on such vehicles. Such markings shall be a minimum of 2 1/2 inches in height and not less than 1/4 inch in width. Letters and numbers shall be on a contrasting background and be conspicuously seen from the outside of the vehicle.

#### B. Restrictions

1. Certificate or license holders are not agents or representatives of the state of Louisiana, the Department of Public Safety or the Office of the State Fire Marshal. No claims or inferences of such shall be made.

2. A certificate or license does not authorize anyone to enforce these rules or to enter any building without the owner's permission or to certify, service, hydrostatically test, inspect, install integrate, or maintain fire protection equipment and/or systems without the owner's permission.

3. Certificate and license holders shall not allow the use of their certificate or licenses by other firms, persons or employees.

4. A certificate or license holder shall not perform any activity relating to portable fire extinguishers, fire hoses, fixed fire suppression equipment/system, or fire detection and alarm equipment/systems unless employed by and within the course and scope of that employment with a firm regulated by the provisions of R.S.40:1664 et seq.

5. A person shall not perform any act for which a certificate or license is required unless:

- a. first being certified or licensed to perform such acts; and
- b. is employed by a firm certified to perform those acts; and
- c. is performing those acts for the certified firm by which he is employed.

6. An apprentice, as defined in these rules, shall not perform any activity regulated by R.S.40:1664 et seq., unless employed by a certified firm and is supervised by a license holder authorized to perform such act or acts Both the apprentice and licensee shall be employed by the same certified firm.

7. Nothing in these rules shall prevent an appropriately licensed firm or person from certifying, hydrostatically testing, inspecting, installing, integrating, maintaining or servicing any manufacturer's portable fire extinguishers, fire hose, fixed fire suppression equipment and/or systems or fire detection and alarm equipment and/or systems.

C. Multiple Names. A firm which uses multiple names must apply for a separate certificate of registration if each named firm has a separate state or federal tax number. All "doing business as" names shall be registered with this office at the time of application.

#### D. Required Inspection

1. The following shall be the building owner's responsibility.

a. Portable fire extinguishers shall be certified annually by a firm with a Portable Fire Extinguisher/Fire Hose endorsement.

b. Pre-engineered fixed fire suppression systems shall be certified at a minimum annually by a firm with either a Fixed Fire Suppression System endorsement or Pre-Engineered Fixed Fire Suppression endorsement. If the suppression system includes electronic fire detection devices, then the firm must also have the appropriate Fire Alarm endorsement or contract to a firm with such.

c. Engineered fixed fire suppression systems shall be certified at a minimum annually by a firm with a Fixed Fire Suppression System endorsement. If the suppression system includes electronic fire detection devices, then the firm must also have the appropriate Fire Alarm endorsement or contract to a firm with such.

d. Clean Agent Gas (Halon 1301 Replacement) fixed fire suppression systems shall be certified at a minimum every six months by a firm with a Fixed Fire Suppression System endorsement and the appropriate Fire Alarm endorsement or contract to a firm with such.

e. Kitchen fixed fire suppression systems shall be certified at a minimum every six months by a firm with either a Fixed Fire Suppression System endorsement, or a Pre-Engineered Fixed Fire Suppression endorsement, or a Kitchen Fixed Fire Suppression System endorsement. If the suppression system includes electronic fire detection devices, then the firm must also have the appropriate Fire Alarm endorsement or contract to a firm with such.

f. Fire alarm and detection systems shall be certified at a minimum annually by a firm with a Fire Alarm endorsement for required fire alarm systems and a Fire Alarm or Fire Alarm (non-required) endorsement for non-required fire alarm systems.

g. Fire hoses shall be certified at a minimum annually by a firm with a Portable Fire Extinguisher/Fire Hose endorsement or a fire protection sprinkler contractor as outlined by R.S.40:1664 et seq.

2. For the purpose of determining the exact date of a required certification, inspection or service, the following guidelines shall apply. Where only the year is known but not the month, January shall be used for the month, where the month is known but not the day, the first day of the month shall be used.

3. The certified firm shall not be responsible for more frequent inspections as required by the applicable engineered specifications, manufacturer's specifications or per the inspection, testing and maintenance chapters as set forth in the applicable NFPA codes and standards unless under contract to perform such.

E. Advertising. All advertising, including but not limited to telephone advertising, shall indicate a firm's certificate of registration number.

F. Service Invoices and Inspection Reports. All service invoices or inspection reports shall reflect the inspection, installation, maintenance, or service performed, all parts replaced, date of service and the technician who performed the work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of State Fire Marshal, LR 26:1341 (June 2000), LR 33:

**Family Impact Statement**

The proposed amendments to LAC 55:V.Chapter 30 should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments on this proposed Rule to DSFM Boyd Petty at 8181 Independence Blvd., Baton Rouge, LA 70806. Comments will be accepted through close of business on June 15, 2007.

Jill Boudreaux  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Fire Protection Licensing**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
Implementation costs would be limited to the cost of copying the new rules and advertising in the State Register. However, it is anticipated that these costs will be very minimal.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No additional revenue collection is anticipated.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Fire protection firms will have minimum expense for marking vehicles and printing new tags.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
Firms will be able to compete on an equal level with others in the industry due to clarity in rules and ambiguities removed.

William B. Petty  
Deputy State Fire Marshal  
0705#058

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
State Uniform Construction Code Council**

Commercial Plan Review (LAC 55:VI.505)

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730.22(C) and (D) and R.S. 40:1730.34(B) relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Code Council hereby proposes to enact a new Rule under

Chapter 5 to temporarily facilitate the availability of commercial plan review to architects, engineers, owners, parishes and municipalities in those local jurisdictions that are currently unable to provide this code enforcement service.

**Title 55  
PUBLIC SAFETY**

**Part VI. Uniform Construction Code**

**Chapter 5. Enforcement of the Louisiana State  
Uniform Construction Code**

**§505. Commercial Plan Review**

A. Until December 31, 2007, where a parish or municipality is not providing plan review, then architects, engineers, owners, parishes or municipalities on commercial projects may request International Building Code plan review by the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 33:

**Family Impact Statement**

The Effect of This Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

The Effect of This Rule on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

The Effect of This Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

The Effect of This Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

The Effect of This Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

The Effect of This Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rules.

Interested persons may submit written comments or requests for public hearing on this proposed Rule change to Paeton Burkett, Attorney, Louisiana State Uniform Construction Code Council, at 7979 Independence Boulevard, Suite 307Q, Baton Rouge, LA 70806. Comments will be accepted through close of business June 10, 2007.

Jill Boudreaux  
Acting Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Commercial Plan Review**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There are no anticipated implementation costs or savings to local governmental units. The proposed rule merely adds language which allows a commercial entity to utilize the Office of the State Fire Marshal directly for plan review services as

opposed to working through the local governmental entity as allowed in current rules. The majority of the local governmental units do not provide the necessary plan review services to commercial projects. The proposed rule does not add any additional expenditure for local governmental units apart from or in addition to those that will result from the enactment of Act 12 of the 2005 First Extraordinary Session. Pursuant to that Act, the Department of Public Safety and Corrections, has employed four additional positions needed as staff for the Uniform Construction Code Council. The annual cost of these positions and associated expenses are estimated to be \$322,478 in FY 08, \$331,361 in FY 09 and \$340,601 in FY 10. There could be additional costs to the State Fire Marshal as a result of this rule. Those cost are associated with additional positions to handle the additional commercial plan review workloads. The estimated costs of those positions are \$252,562.42.

This rule expires December 31, 2007.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no anticipated effect on revenue collections for local governmental units. However, this rule would impact the revenue collections for the Office of the State Fire Marshal. It can be anticipated that this rule change increases the plan review workload of the agency by 25% up to 2,375 additional projects. Based upon current fee schedule, an average of \$672 per plan review, an additional \$1,596,000 in collected Fees and Self-generated Revenues is anticipated. These fees will be spent to defray the cost of the anticipated additional workload as well as other costs associated with the implementation of Act 12 of the 2005 First Extraordinary Session.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Pursuant to current law, no commercial or residential building may be constructed, altered or repaired until plans have been reviewed and inspected for compliance with the Louisiana Uniform Construction Code. This rule merely adds language to allow commercial entities the ability to work with the Office of the State Fire Marshal directly, which further expands the availability of commercial plan review services and for a reasonable fee.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no impact upon competition and employment as the proposed rule applies to local governmental units that are currently unable to provide commercial plan review services and does not affect those local governmental entities currently providing commercial plan review services.

Jill P. Boudreaux  
Acting Undersecretary  
0705#074

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
State Uniform Construction Code Council**

**Municipal or Parish Building Code Enforcement Officers  
Classifications and Required Certifications  
(LAC 55:VI.703)**

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730:22(C) and (D) and R.S. 40:1730.34(B) relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction

Code Council hereby proposes to amend Chapter 7 to facilitate the number of individuals who are qualified to obtain a certificate of registration from the Louisiana State Uniform Construction Code Council.

**Title 55**

**PUBLIC SAFETY**

**Part VI. Uniform Construction Code**

**Chapter 7. Certificates of Registration**

**§703. Classifications and Required Certifications for Municipal or Parish Building Code Enforcement Officers**

A. - C.1.a. ...

2. Specialty Classifications

a. Commercial Inspectors

i. Commercial Building Inspector

Requirements—possess a current ICC Commercial Building Inspector, ICC Building Inspector, or ICC Commercial Combination Inspector certificate.

ii. Commercial Electrical Inspector

Requirements—possess a current ICC Commercial Electrical Inspector, ICC Electrical Inspector, or ICC Commercial Combination Inspector certificate.

iii. Commercial Mechanical Inspector

Requirements—possess a current ICC Commercial Mechanical Inspector, ICC Mechanical Inspector, or ICC Commercial Combination Inspector certificate.

iv. Commercial Plumbing Inspector

Requirements—possess a current ICC Commercial Plumbing Inspector, ICC Plumbing Inspector, or ICC Commercial Combination Inspector certificate.

v. Commercial Energy Inspector

Requirements—shall be enforced by the Office of the State Fire Marshal.

b. Commercial and Residential Plan Examiners or Reviewers

i. Building Plans Examiner

Requirements—possess a current ICC Commercial Building Plans Examiner certificate.

ii. Electrical Plans Examiner

Requirements—possess a current ICC Commercial Electrical Plans Examiner certificate.

iii. Mechanical Plans Examiner

Requirements—possess a current ICC Commercial Mechanical Plans Examiner certificate.

iv. Plumbing Plans Examiner

Requirements—possess a current ICC Commercial Plumbing Plans Examiner certificate.

v. Commercial Energy Plans Examiner

Requirements—shall be enforced by the Office of the State Fire Marshal.

c. Residential Inspectors

i. Residential Building Inspector

Requirements—possess a current ICC Residential Inspector, ICC Building Inspector, or ICC Residential Combination Inspector certificate.

ii. Residential Electrical Inspector

Requirements—possess a current ICC Residential Electrical Inspector, ICC Electrical Inspector, or ICC Residential Combination Inspector certificate.

iii. Residential Mechanical Inspector

Requirements—possess a current ICC Residential

Mechanical Inspector, ICC Mechanical Inspector, or ICC Residential Combination Inspector certificate.

iv. Residential Plumbing Inspector Requirements—possess a current ICC Residential Plumbing Inspector, ICC Plumbing Inspector, or ICC Residential Combination Inspector certificate.

v. Residential Energy Inspector Requirements—possess a current ICC Residential Energy Inspector/Plans Examiner certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 33:292 (February 2007), amended LR 33:

**Family Impact Statement**

1. The Effect of This Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of This Rule on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of This Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of This Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of This Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of This Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed rules.

Interested persons may submit written comments or requests for public hearing on this proposed Rule change to Paeton Burkett, Attorney, 7979 Independence Boulevard, Suite 307Q, Baton Rouge, LA 70806. Comments will be accepted through close of business June 10, 2007.

Jill P. Boudreaux  
Acting Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Municipal or Parish Building Code Enforcement Officers Classifications and Required Certifications**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This rule will not result in an increase in costs or savings to local governmental units since the rule only broadens the categories of who can obtain a certificate of registration. According to current state law and Council Rules, before a code enforcement officer can register with the Louisiana State Uniform Construction Code Council, they must obtain a certain ICC certification. The proposed rule does not add any additional expenditures apart from or in addition to those that will result from the enactment of Act 12 of the 2005 First

Extraordinary Session. Pursuant to that Act, the Department of Public Safety and Corrections has employed four (4) additional positions needed as staff for the Uniform Construction Code Council. The annual cost of these positions and associated expenses are estimated to be \$322,478 in FY 08, \$331,361 in FY 09, and \$340,601 in FY 10.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will have no effect on revenue collections of state governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

No commercial or residential building may be constructed, altered or repaired until plans have been reviewed and the structure inspected for compliance with the Louisiana Uniform Construction Code. This rule is being adopted to further expand the number of individuals who are qualified to perform code enforcement. Individuals who currently hold one of the newer International Code Council (ICC) certifications will now be able to obtain their certificates of registration without further ICC certification.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be a positive effect on competition and employment as the proposed rule will expand the number of individuals who are qualified to register with the Louisiana Uniform Construction Code Council to perform code enforcement services.

Jill P. Boudreaux  
Acting Undersecretary  
0705#075

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Office of Alcohol and Tobacco Control**

**Class C-Package Store (LAC 55:VII.327)**

Under the authority of R.S. 26:71.2 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to promulgate LAC 55:VII.327 relative to operation as a Class C-Package Store retail alcoholic beverage outlet, as authorized and directed by the Louisiana Legislature during the 2006 Regular Session.

Louisiana Administrative Code 55:VII.327 provides for conduct allowable in the operation of a Class C-Package Store to ensure the safe and responsible distribution of specialty frozen alcoholic beverage, commonly known as frozen daiquiris, under the newly-created permit.

**Title 55**

**PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control**

**Subpart 1. Beer and Liquor**

**Chapter 3. Alcoholic Beverage Permits**

**§327. Class C-Package Store Retail Alcoholic Beverage Permits**

**A. Definitions**

*Batch*—any mixture of ingredients or concoction prepared, blended, mixed, or otherwise combined in the preparation of a regulated or alcoholic beverage, as defined by R.S. 26:2 and 241, to be served to patrons in the form of

specialty frozen drinks, commonly known as frozen daiquiris.

*Batch Freezer*—any refrigeration or cooling unit, machine, device or processor of any kind in which a *batch*, as defined in this Section, of specialty frozen drinks, commonly known as frozen daiquiris, is placed for purposes of transforming the batch into frozen specialty drinks for service to patrons, regardless of whether the refrigeration or cooling unit, machine, device or processor includes a spigot or other mechanism for pouring the specialty frozen drink into single serving closed containers for service to patrons.

B. In order to qualify for a Class C-package store retail alcoholic beverage permit, the applicant must:

1. operate a place of business where the sale and service of alcoholic beverages represents more than 50 percent of the business' total annual retail sales revenue;

2. not offer to sell, sell, or otherwise distribute motor fuel anywhere on or about the licensed premises;

3. sell and serve alcoholic beverages, including frozen specialty alcoholic beverages, in closed containers prepared for transportation and consumption off the licensed premises only;

4. maintain a public habitable floor area of no less than 1,000 square feet;

5. not allow any person under the age of 18 years to enter, visit, or loiter in or about the licensed premises;

6. not employ anyone under the age of 18 years;

7. not allow the consumption of any alcoholic beverage for any purpose of reason on or about the licensed premises;

8. not permit the mixing, sale, or service of mixed alcoholic beverages on the licensed premises;

9. notwithstanding Paragraph 8 above, a Class C-package store license holder may combine non-alcoholic frozen specialty mixes with factory sealed and packaged alcoholic beverages on the licensed premises for the sole purpose of preparing a *batch*, as defined in Subsection A of this Section, which batch is placed in a *batch freezer*, as defined in Subsection A of this Section designed for the dispensing of frozen specialty alcoholic beverages, provided the license holder complies with the following at all times:

a. the mixing of a *batch*, as defined in Subsection A above, shall at all times be conducted out of the view of the public;

b. open bottles of manufacturer-packaged alcoholic beverage or any other open alcoholic beverage shall be kept out of view of the public;

c. all frozen specialty drinks shall be dispensed from batch freezer machines into containers affixed with a lid for transportation and consumption by the customer off of the licensed establishment's premises. The use of blenders or similar devices is prohibited;

d. no additional alcoholic beverage shall be added to the batch after the batch is placed into the batch freezer machine. The sale and service of additional "shots" or any other portion of any alcoholic beverage or the introduction of any additional alcohol into a container used for the sale or service of frozen specialty drinks to the public is prohibited;

e. the preparation and/or sale of one or more drinks commonly known as "highballs," "cocktails," or any type of "mixed drink" other than frozen specialty alcoholic

beverages, as described and/or defined in this Section, is expressly prohibited on or about the licensed premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:71.2B.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 33:

### Family Impact Statement

As required by Act 1183 of the Regular Session of the Louisiana Legislature, the following Family Impact Statement is submitted for publishing with the Notice of Intent in the Louisiana Register. A copy of this statement will also be provided to the legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of this proposed Rule will have the effect of denying minors access to the premises of the newly created class c-package store alcoholic beverage outlets.

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 Budget. Implementation of this proposed Rule will have no effect on family earnings and budget.

5. The Effect on Behavior and Personal Responsibility of Children. Implementation of this proposed Rule will have no effect on behavior and responsibility of children.

6. The Ability of the Family or 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 local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Commissioner Murphy J. Painter, Office of Alcohol and Tobacco Control, 8549 United Plaza Boulevard, Suite 220, Baton Rouge, LA 70809; P.O. Box 66404, Baton Rouge, LA 70896-6404; or via facsimile to (225) 925-3975. All comments must be submitted by 4:30 p.m. on Friday, June 8, 2007. A public hearing will be held on Friday, June 8, 2007 at 3 p.m. in the Office of Alcohol and Tobacco Control Hearing Room at 8549 United Plaza Boulevard, Second Floor in Baton Rouge, Louisiana.

Murphy J. Painter  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Class C-Package Store

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Promulgation of this rule will not result in any costs to state or local governmental units. Nor is it likely to result in any savings to any such units. Rather, this rule seeks to codify and/or clarify policy that is already in place in order to ensure the safe and responsible offering for sale, sale, and service of alcoholic beverages.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Promulgation of this rule will not effect revenue collections of state or local governmental units whatsoever.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Promulgation of this rule will not result in any costs and/or economic benefits to directly affected persons or non-governmental groups.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Promulgation of this rule should help ensure a level playing field on which all holders of newly created class c-package store retail alcoholic beverage permits will compete. This proposed rule seeks to clarify the Office of Alcohol and Tobacco Control's policy in regard to acceptable qualifications and practices off the premises of such establishments.

Murphy J. Painter  
Commissioner  
0705#077

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Revenue Office of Alcohol and Tobacco Control

Wine Producer Permits (LAC 55:VII.324)

Under the authority of R.S. 26:85 and 793, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Department of Revenue, Office of Alcohol and Tobacco Control proposes to promulgate LAC 55:VII.324 relative to the safe and responsible offering for sale, sale and distribution of product of wine producers at fairs, festivals, farmer's markets and similar venues.

#### Title 55

#### PUBLIC SAFETY

#### Part VII. Alcohol and Tobacco Control

#### Subpart 1. Beer and Liquor

#### Chapter 3. Liquor Credit Regulations

#### §324. Wine Producers; Fairs, Festivals, Farmer's Markets and Similar Venues

A. For purposes of this Section, the following definitions shall apply.

1. *Fair, Festival, Farmer's Market or Other Similar Venue*—any non-profit, state or local governmental organizational event being held in a limited duration capacity.

2. *Wine Producer*—the holder of a valid unsuspended wine producers permit, as defined in R.S. 26:2(21).

B. Wine producers may, with local authority, offer for sale and sell directly to consumers at fairs, festivals, farmer's markets and other similar venues under the following terms and/or conditions.

1. Any and all sales at fairs, festivals, farmer's markets and similar venues shall be limited in duration as provided in LAC 55:VII.323.

2. Notwithstanding Paragraph 1 of Subsection B above, if the site of the fair, festival, farmer's market or similar venue is utilized by a state or local governmental entity for purpose of promoting tourism and/or agribusiness, durational limitations provided in LAC 55:VII.323 shall not apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:85 and 793.



HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 33:

### Family Impact Statement

As required by Act 1183 of the Regular Session of the Louisiana Legislature, the following Family Impact Statement is submitted for publishing with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to the legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of this proposed Rule will have the effect of establishing policy relative to holders of Wine Producers Permits ability to offer for sale and sell their products at fairs, festivals, farmer's markets and similar venues to ensure that such products are safely and responsibly offered for sale, sold, and distributed to person of legal drinking age.

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 Budget. Implementation of this proposed Rule will have no effect on family earnings and budget.

5. The Effect on Behavior and Personal Responsibility of Children. Implementation of this proposed Rule will have no effect on behavior and responsibility of children.

6. The Ability of the Family or 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 local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Commissioner Murphy J. Painter, Office of Alcohol and Tobacco Control, 8549 United Plaza Boulevard, Suite 220, Baton Rouge, LA 70809; P.O. Box 66404, Baton Rouge, LA 70896-6404; or via facsimile to (225) 925-3975. All comments must be submitted by 4:30 p.m. on Friday, June 8, 2007. A public hearing will be held on Friday, June 8, 2007 at 3 p.m. in the Office of Alcohol and Tobacco Control Hearing Room at 8549 United Plaza Boulevard, Second Floor in Baton Rouge, Louisiana.

Murphy J. Painter  
Commissioner

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Wine Producer Permits**

### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Promulgation of this rule will not result in any costs to state or local governmental units. Nor is it likely to result in any savings to any such units. Rather, this rule seeks to codify and/or clarify policy that is already in place in order to ensure the safe and responsible offering for sale, sale, and service of alcoholic beverages.

### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Promulgation of this rule will not effect revenue collections of state or local governmental units whatsoever.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Promulgation of this rule will not result in any costs and/or economic benefits to directly affected persons or non-governmental groups.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Promulgation of this rule should help ensure a level playing field on which all holders of newly created Wine Producers Permits will compete. This proposed rule seeks to clarify the Office of Alcohol and Tobacco Control's policy in regard to acceptable qualifications and practices off the premises of such establishments.

Murphy J. Painter  
Commissioner  
0705#076

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Social Services Office of Family Support

FITAP/STEP—Eligibility and Assessment  
(LAC 67:III.1227, 1247 and 5727)

The Department of Social Services, Office of Family Support, proposes to amend the Administrative Procedure Act, R.S. 49:953(B) in Title 67 Part III, Subpart 2, Family Independence Temporary Assistance Program in Sections 1227 and 1247 and Subpart 16, Strategies to Empower People (STEP) Program, in Section 5727. This Rule is in pursuant to the authority of Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant.

Language is being removed from Section 1227, C and D regarding the inclusion of essential persons in the FITAP grant and FITAP assistance unit to comply with language set forth in Sections 401, 402, 403, and 408 of Title IV of the Social Security Act, which states the first goal of TANF is to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives and further states that no part of the TANF grant shall be used to provide assistance to a family unless the family includes a minor child who resides with the family or a pregnant individual. Current language at Section 1227 allows for certain other individuals who are not related to the child (essential persons) to be included in the assistance unit and/or grant.

Section 1247.E.1-2 restores language concerning the eligibility requirements for cash assistance stated in Title IV of the Social Security Act. Section 5727.B.1-4 restores language that addresses criteria in the Family Transition Assessment (FTA) to assist participants upon their transition from cash assistance. Text in these Sections was erroneously omitted from LR 31:102 and 103 (January 2005) due to incorrect document formatting. Failure to amend the language in Sections 1227, 1247, and 5727 could result in noncompliance with federal regulations and the imposition of penalties and sanctions by the Administration for Children and Families, the federal agency responsible for overseeing Louisiana's TANF Block Grant.

Changes to Sections 1247 and 5727 were made effective February 9, 2007, by an Emergency Rule published in the February issue of the *Louisiana Register*.

**Title 67**  
**SOCIAL SERVICES**

**Part III. Family Support**

**Subpart 2. Family Independence Temporary Assistance Programs**

**Chapter 12. Application, Eligibility, and Furnishing Assistance**

**Subchapter B. Conditions of Eligibility**

**§1227. Living in the Home of a Qualified Relative**

A. - B.5. ...

C. - D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.2, 42 U.S.C. 608 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 32:264 (February 2006), LR 33:

**§1247. Time Limits**

A. - D.3. ...

E. Any month for which such assistance was provided will be disregarded from the 24- and 60-month time limits with respect to the individual, if the individual was:

1. a minor child; and
2. not the head of a household or married to the head of a household.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.6 and R.S. 46:460.5(A)(3), Act 58, 2003 Reg. Session; Act 675, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR 26:349 (February 2000), LR 27:2263 (December 2001), LR 30:494 (March 2004), LR 31:102 (January 2005), LR 33:

**Subpart 16. Strategies to Empower People (STEP) Program**

**Chapter 57. Strategies to Empower People (STEP) Program**

**Subchapter C. Step Program Process**

**§5727. Family Transition Assessment**

A. ...

B. The FTA shall include but is not limited to:

1. a plan for on-going success in the work force;
2. identification of short and long-term goals;
3. identification of potential barriers and an action plan to overcome these barriers; and
4. information regarding eligibility for supportive services including, but not limited to: Medicaid benefits, food stamp benefits, child care, transportation, Louisiana Child Health Insurance Program, the earned income tax credit, and TANF-funded services.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session; Act 110 and Act 675, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004), amended LR 31:103 (January 2005), LR 33:

**Family Impact Statement**

1. What effect will this Rule have on the stability of the family? This Rule should have no impact on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The Rule will have no effect on the authority

and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will define and clarify the functioning of families in assuring that each member of the assistance unit is related and have proven relationships.

4. What effect will this have on family earnings and family budget? This Rule may affect a family's budget if an essential person is included in their household, the family would have a decrease in their monthly cash grant once the ineligible person(s) is removed.

5. What effect will this have on the behavior and personal responsibility of children? This Rule can enhance the effect on the behavior and personal responsibility of children, as it can assure cash assistance received for the children is only provided to related persons per TANF regulations.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, these programs are strictly an agency function.

All interested persons may submit written comments through June 28, 2007, to Adren O. Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed Rule will be held on June 28, 2007, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call 225-342-4120 (Voice and TDD).

Ann S. Williamson  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: FITAP/STEP  
Eligibility and Assessment**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This rule change proposes to amend Section 1247 and Section 5727 of the Louisiana Administrative Code to restore language that was erroneously omitted from LR 31:102 and 103 (January 2005) due to incorrect document formatting.

The rule change also proposes to remove language from Section 1227, C and D regarding the inclusion of individuals who are not related to the child (essential persons) in the FITAP grant and FITAP assistance unit to comply with language set forth in sections 401, 402, 403, and 408 of Title IV of the Social Security Act. These essential persons will no longer be included in the determination of the grant amount for a household, which will result in smaller grant amounts being issued, effective September 2007. It is anticipated that this rule will result in a savings of \$5,460 in federal funds for FY 07/08 and \$6,522 in federal funds for FY 08/09. Any savings will be used for other TANF eligible-activities.

The only cost associated with this rule is the cost of publishing rulemaking, which is estimated to be \$160. The agency has sufficient funds to cover this cost.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no significant anticipated costs or economic benefits to any persons or nongovernmental groups as a result of this rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule should have no impact on competition and employment.

Adren O. Wilson  
Assistant Secretary  
0705#066

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Fur Trapping Season (LAC 76:V.129)**

The Wildlife and Fisheries Commission does hereby advertise its intent to establish a fur trapping season for the state of Louisiana.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part V. Wild Quadrupeds and Wild Birds**

**Chapter 1. Wild Quadrupeds**

**§129. Fur Trapping Season**

A. The statewide open trapping season for nongame quadrupeds shall open on November 20 and close on March 31. The secretary shall be authorized to close, extend, delay, or reopen the season as biologically justifiable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:259(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 33:

**Family Impact Statement**

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connect with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Interested persons may submit comments relative to the proposed Rule to Philip E. Bowman, Fur and Refuge Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 prior to July 5, 2007.

Earl P. King, Jr.  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Fur Trapping Season**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation of the proposed rule will be carried out using existing staff and funding levels. No additional cost or savings are anticipated.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will set the trapping season for nongame quadrupeds to open on November 20th and close on March 31st of each year. It also will allow the Secretary to close, extend, delay, or re-open the season as biologically justifiable. By knowing when the trapping season will begin and end each year, licensed trappers will be able to better plan their fur trapping activities.

No additional costs, workload, paperwork or impact on receipts and/or income to directly affected persons or nongovernmental groups will be incurred.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition and employment is anticipated.

Wynette Kees  
Deputy Undersecretary  
0705#032

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**White Lake Wetlands Conservation Area (LAC 76:III.335)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to revise the White Lake Wetlands Conservation Area management plan in accordance with the following Rule.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part III. State Game and Fish Preserves and Sanctuaries**

**Chapter 3. Particular Game and Fish Preserves,  
Wildlife Management Areas, Refuges and  
Conservation Areas**

**§335. White Lake Wetlands Conservation Area**

A. The general framework for public use of consumptive resources of the White Lake Wetlands Conservation Area Management Plan is as follows.

White Lake Wetlands Conservation Area Management Plan		
Activities	Season	Cost
Alligators Wild Alligator Harvest Alligator Egg Collection	LDWF Season June & July	40% of public bid Public bid
Waterfowl Teal Lottery Hunts Youth/Physically Challenged	LDWF Season First Weekend	\$100 per gun No cost
Hunts Marsh Lottery Hunts Rice Lottery Hunts Group Hunts	LDWF Season LDWF Season LDWF Season	\$150 per gun \$150 per gun \$25,000 per group
Fishing	March 15-August 15	\$40 per permit

1. The number/quantity of alligators, eggs, hunters, groups and permits for the above activities shall be established annually based upon biological and technical data presented by the department to the board.

B. Schedule of Costs for Public Use of Facilities for Non-Consumptive Activities

1. Daily Use

a. \$300—includes one day use of lodge for meetings with nothing provided (for up to 15 people, weekdays only).

b. \$300 + \$10/person—includes one day use of lodge for meetings with coffee, cold drinks and bottled water provided.

c. \$300 + \$20/person—includes one day use of lodge for meetings with coffee, cold drinks, bottled water and lunch provided. The lunch provided will consist of a sandwich tray and chips or something similar. It will not include a hot lunch.

d. Exemptions from daily cost—state agencies, local and federal agencies and universities conducting research in cooperation with the department. Costs for beverages or lunch apply (\$10/person for drinks, \$20/person for drinks and lunch).

2. Overnight Use

a. \$400 + \$25/person/night—includes overnight stay at lodge with nothing provided except linens. (For up to 12 people, weekdays only).

b. \$400 + \$35/person/night—includes overnight stay at lodge with coffee, cold drinks, bottled water and linens provided.

c. \$900 + \$35/person/night—includes overnight stay at lodge with coffee, cold drinks, bottled water, meals (breakfast, lunch and supper) and linens provided.

d. Exemptions from Daily Cost—state agencies, local and federal agencies and universities conducting research in cooperation with the department. Costs for beverages or lunch apply (\$10/person for drinks, \$20/person/meal).

e. Exemptions from costs for meals apply to all invited to department sponsored events.

3. Skeet Range

a. \$10/person/25 clay pigeons.

b. \$15/person/25 clay pigeons, 25 shotgun shells provided.

c. Exemptions—any persons using the skeet range at department sponsored events.

4. Boat Tours
  - a. \$10/person/ride. Limited to authorized function attendees.
  - b. Exemptions—any state, local or federal agency in cooperation with the department on mutual projects. Any university in cooperation with the department on research projects.

5. Use of facilities is subject to availability as well as staff availability and other scheduled events on the area.

AUTHORITY NOTE: Promulgated in accordance with Act 613 of the 2004 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 33:538 (March 2007), amended LR 33:

**Family Impact Statement**

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Interested persons may submit written comments on the proposed Rule to L. Brandt Savoie, Deputy Assistant Secretary, Office of Wildlife, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than Thursday, July 5, 2007.

Earl P. King, Jr.  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: White Lake Wetlands  
Conservation Area**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
 

Implementation of the proposed rule will be carried out using existing staff and funding levels. No increase or decrease in costs is anticipated to implement the proposed rule.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is anticipated to have a slight positive effect on state revenue collections deposited in the White Lake Property Fund. The increase in state revenue collections will depend on the number of applications received, the specific activities requested and the availability of the facilities and staff at the requested time of usage. Since no historical usage information for the new non-consumptive activities is available, no estimate of the increase in state revenue collections from these activities can be provided. State revenue collections for consumptive activities are assumed to remain the same, except for fishing, which is estimated to increase by \$750.00, due to the proposed \$10.00 fee increase.

Local revenue collections of governmental units are not anticipated to be significantly impacted.

- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change adds a schedule of costs for public use of facilities for non-consumptive activities on the White Lake Wetlands Conservation Area. It increase the cost of the fishing permit from \$30 to \$40 and sets the wild alligator harvest season on the area to be identical to the Louisiana Wildlife and Fisheries alligator season. Individuals who use the facilities or participate in the new non-consumptive wildlife and fisheries activities that are being offered will be required to pay a fee, except for state, local and federal agencies and universities who are conducting research in cooperation with the Department. Businesses who supply goods and services to participants in these activities and users of the public facilities may experience a slight increase in sales of equipment and associated items.

- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is anticipated to have no effect on competition and employment in the public and private sectors.

Wynette Kees  
Deputy Undersecretary  
0705#033

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Horticulture Commission

#### Retail Floristry Examination

The next retail floristry examinations will be given July 23-27, 2007, 9:30 a.m. at Louisiana Technical College, Lomax Hall, Ruston, LA. The deadline for sending in application and fee is June 8, 2007. No applications will be accepted after June 8, 2007.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to June 8, 2007. Questions may be directed to (225) 952-8100.

Bob Odom  
Commissioner

0705#022

## POTPOURRI

### Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Structural Pest Control Commission

#### Approved Termiticides and Manufacturers

The Louisiana Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, is hereby giving notice of the list of termiticides and manufacturers, approved by the Structural Pest Control Commission, for use in Louisiana.

Approved Termiticides and Manufacturers		
Product	Percentage	Manufacturer
Baseline (Bifenthrin)	0.06% - 0.12%	FMC
Bifen XTS (Bifenthrin)	0.06% - 0.12%	Control Solutions
Bifen IT (Bifenthrin)	0.06% - 0.12%	Control Solutions
Bifen PT (Bifenthrin)	0.06% - 0.12%	Control Solutions
Bifenthrin Pro Multi-Insecticide (Bifenthrin)	0.06% - 0.12%	BASF
Bifenthrin TC (Bifenthrin)	0.06% - 0.12%	Control Solutions
Bifenthrin Termiticide / Insecticide (Bifenthrin)	0.06% - 0.12%	Speckoz
Biflex TC (Bifenthrin)	0.06% - 0.12%	FMC
Cyper TC (Cypermethrin)	0.25% - 1.00%	Control Solutions
Cypermethrin G-Pro ( Cypermethrin)	0.25% - 1.0%	GRO-PRO
Demon (Cypermethrin)	0.25% - 1.00%	Zeneca
Demon MAX (Cypermethrin)	0.25% - 1.0%	Syngenta

Approved Termiticides and Manufacturers		
Product	Percentage	Manufacturer
Dominion 2L (Imidacloprid)	0.05% - 0.10%	Control Solutions
Dominion 75 WSP (Imidacloprid)	0.05% - 0.10%	Control Solutions
Dragnet FT (Permethrin)	0.50% - 2.00%	FMC
Dragnet SFR (Permethrin)	0.50% - 2.00%	FMC
Imida E Pro 2F (Imidacloprid)	0.05% - 0.10%	Entigra
Imida E Pro 75 WSP (Imidacloprid)	0.05% - 0.10%	Entigra
Impasse Termite System (Lambda-cyhalothrin)		Syngenta
Impasse Termite Blocker (Lambda-cyhalothrin)		Syngenta
MasterLine (Bifenthrin)	0.06% - 0.12%	Univar
Maxxthor SC (Bifenthrin)	0.06% - 0.12%	Ensystem
Permaster 380 (Permethrin)	0.50% - 2.00%	LG Chemical
Permethrin SFR (Permethrin)	0.50% - 2.00%	Control Solutions
Permethrin TC (Permethrin)	0.50% - 2.00%	Micro-Flo
Phantom (Chlorfenapyr)	0.063% - 0.25%	BASF
Prelude (Torpedo)(Permethrin)	0.50% - 2.00%	Zeneca
Premise 75 (Imidacloprid)	0.05% - 0.10%	Bayer
Premise .05SC (Imidacloprid)	0.05% - 0.10%	Bayer
Premise II (Imidacloprid)	0.05% - 0.10%	Bayer
Premise Pre-construction (Imidacloprid)	0.05% - 0.10%	Bayer
**Premise Gel (Imidacloprid)	0.001%	Bayer
Prevail (Cypermethrin)	0.25% - 1.00%	FMC
Prevail TC (Cypermethrin)	0.30% - 0.60%	FMC
Prevail FT (Cypermethrin)	0.25% - 1.00%	FMC
Prevail Pretreat (Cypermethrin)	0.25% - 1.00%	FMC
Pro-Build TC (Cypermethrin)	0.25% - 1.0%	Syngenta
Prothor WP (Imidacloprid)	0.05% - 0.10%	Ensystem III
Prothor WSP (Imidacloprid)	0.05% - 0.10%	Ensystem III
Talstar P (Bifenthrin)	0.06% - 0.12%	
Talstar Pretreat (Bifenthrin)	0.06% - 0.12%	FMC
Talstar (Bifenthrin) 0.06% -	0.12%	FMC
Talstar One Multi – Insecticide (Bifenthrin)	0.06% - 0.12%	FMC
Tengard SFR (Permethrin)	0.50% - 2.00%	United Phosphorus
Termidor (Fipronil)	0.06% - 0.125%	BASF
Termidor 80WG (Fipronil)	0.06% - 0.125%	BASF
Termidor SC (Fipronil)	0.06% - 0.125%	BASF
ValueLine Bifenthrin TC (Bifenthrin)	0.06% - 0.12%	FMC
** Premise Gel is approved for targeted (spot) application only.		

BAITS (Not in Pilot Program)	
Advance Compressed Termite Bait (Diflubenzuron)	Whitmire Micro-Gen
Advance Compressed Termite Bait II (Diflubenzuron)	Whitmire Micro-Gen
FirstLine GTX Termite Bait Station (Sulflurimid)	FMC
FirstLine GT Termite Bait Station (Sulflurimid)	FMC
FirstLine Termite Bait Station (Sulflurimid)	FMC
FirstLine GT Plus (Sulflurimid)	FMC
Labyrinth (Diflubenzuron)	Ensystem
Labyrinth AC (Diflubenzuron)	Ensystem
Recruit II (Hexaflumuron)	Dow Agro Sciences
Recruit II AG (Hexaflumuron)	Dow Agro Sciences
Recruit III (Noviflumuron)	Dow Agro Sciences
Recruit III AG (Noviflumuron)	Dow Agro Sciences
Recruit IV (Noviflumuron)	Dow Agro Sciences
Recruit IV AG (Noviflumuron)	Dow Agro Sciences
Shatter (Hexaflumuron)	Dow Agro Sciences

<b>BAITS (Not in Pilot Program)</b>	
T-Max (Noviflumuron)	Dow Agro Sciences/ Terminix International
T-Max AG (Noviflumuron)	Dow Agro Sciences/ Terminix International
T-Max II (Diflubenzuron)	Whitmire Micro-Gen/ Terminix International

Bob Odom  
Commissioner

0705#023

**POTPOURRI**

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

Annual Emissions Inventory Data Submittals  
(LAC 33:III.919 and 5107)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with LAC 33:III.919.D and LAC 33:III.5107, the Secretary gives notice that the directions for submittals of Annual Criteria Pollutant Emissions Inventory Data as well as the Annual Toxic Emissions Data Inventory (TEDI) for calendar year 2006 are as described below.

The Louisiana Department of Environmental Quality has initiated a project to update and enhance the existing emissions inventory reporting system. The new reporting system has consolidated the reporting for criteria pollutant and toxic emissions inventories. The new reporting system, known as ERIC, was brought on-line in April 2007. Training seminars were held in April 2007 to train reporters in the new reporting system and to review reporting requirements for both LAC 33:III.5107 and LAC 33:III.919. Although the Department has already extended the due date for the criteria pollutant point source files, we recognize that considerable time may be needed by very large facilities to properly submit all of their emission data in the format that we have requested in this first reporting cycle.

The Department wants to ensure that high quality data is collected from our submitters. To that end, we have evaluated a request to delay the submittal of the TEDI inventory and have determined that separating the TEDI data from the criteria pollutant emissions data would not be practical since the new system was designed to combine the two inventories into one.

The Department has further determined that extending the due date for the entire 2006 emissions inventory (criteria pollutant and TEDI) to September 1, 2007, would not negatively affect the agency or data availability to the public. In addition, this would allow facilities the extra time needed to get their emission inventories submitted in the ERIC system.

Therefore, the Department is extending the deadline for submitting both portions of the emissions inventory in the ERIC system (criteria pollutant and TEDI) from July 1, 2007 to September 1, 2007.

For more information regarding this notice, you may contact Jennifer Mouton at (225) 219-3502 or Michael Vince at (225) 219-3485.

Herman Robinson, CPM  
Executive Counsel

0705#049

**POTPOURRI**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

General Air Permit Template Modification

The Louisiana Department of Environmental Quality (LDEQ), Office of Environmental Services, is accepting written comments on the modification of the generic template for the Part 70 General Air Operating Permits. The General Air Permit for the qualifying facility can be issued for an Initial, Modification or Renewal for any company, located in the State of Louisiana. The facility can be located in any Parish of the state.

The "Facility Specific Requirements" section in the proposed General Air Permit Template contains the universe of regulations that may apply to the facility and associated equipment. The General Permit Briefing Sheet and associated Facility-Specific Requirements comprise the generic template for all the general air permits to be issued by the Department. On a site specific basis, this generic template will be modified to describe the facility process and list only those regulations that apply to the facility requesting this General Air Permit.

The public is invited to comment on the list of regulations and the language of each specific requirement which will be available for use in issuing General Air Permits. This general permit incorporates several new regulations. A listing of the regulations added at this time can be found in the Preamble to the Statement of Basis.

1. The permitting authority may issue a general permit intended to cover numerous similar sources or activities. General permits shall be issued in accordance with LAC 33:III.519 and, prior to issuance, shall undergo public notice and review by affected states and EPA in accordance with LAC 33:III.531 and 533. Each general permit shall incorporate terms and conditions applicable to sources which would qualify for the general permit. Any general permit shall identify criteria by which sources may qualify for the general permit, and may provide for applications which deviate from the requirements of LAC 33:III.517.

2. The owner or operator of any source which would qualify for the general permit may apply for authorization to operate under the general permit. The application must include all information necessary to determine qualification for and to assure compliance with the general permit. The owner or operator shall publish a notice of the application in a newspaper of general circulation in the local area where the source is or would be located.

3. The permitting authority may approve an owner or operator's application for authorization to operate under the general permit without repeating the public participation procedures. Such an approval shall not be a final permit action for purposes of judicial review regarding the terms and conditions of the general permit.

4. Any source which is issued the general permit shall, notwithstanding a permit shield, be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the general permit.

5. General permits shall not be issued for affected sources under the Acid Rain Program established pursuant to Title IV of the Clean Air Act.

The proposed "General Permit Facility Specific Requirements" section contains the universe of regulations that may apply to the facility and associated equipment. If any regulation applies to any facility or associated emission source, and is not part of the attached specific conditions, then that facility cannot be granted a General Permit. An exception to this is when there is a specific condition that meets all of the requirements of being a state only requirement. This excludes federally enforceable specific conditions or limitations. The General Permit Statement of Basis provides additional information regarding how a facility specific General Permit contains only those regulations that apply to the specific facility and its associated emission sources.

A technical review of the working draft of the proposed permit was submitted to the facility representative and the LDEQ Surveillance Division. Any remarks received during the technical review will be addressed in the "Worksheet for Technical Review of Working Draft of Proposed Permit." All remarks received by LDEQ are included in the record that is available for public review.

Written comments, written requests for a public hearing or written requests for notification of the final decision regarding this permit action may be submitted to Ms. Soumaya Ghosn at LDEQ, Public Participation Group, Box 4313, Baton Rouge, LA 70821-4313. Written comments and/or written requests must be received by 12:30 p.m., Thursday, June 21, 2007. Written comments will be considered prior to a final permit decision.

If LDEQ finds a significant degree of public interest, a public hearing will be held. LDEQ will send notification of the final permit decision to the applicant and to each person who has submitted written comments or a written request for notification of the final decision.

The proposed General Permit Briefing Sheet, General Information Report, Inventories Report, Facility Specific Requirements, and Statement of Basis are available for review at the LDEQ, Public Records Center, Room 127, 602 North 5th Street, Baton Rouge, LA. Viewing hours are from 8 a.m. to 4:30 p.m., Monday through Friday (except holidays). The available information can also be accessed electronically on the Electronic Document Management System (EDMS) on the DEQ public website at [www.deq.louisiana.gov](http://www.deq.louisiana.gov).

Additional copies may be reviewed at the Parish Library Headquarters in each parish of the state. The material can also be viewed at the Calcasieu Parish Library, Sulphur Regional Branch, 1160 Cypress Street, Sulphur, LA 70663-

5111 and the Morgan City Public Library, 220 Everett Street, Morgan City, LA 70380.

Inquiries or requests for additional information regarding this permit action should be directed to Kermit Wittenburg, LDEQ, Air Permits Division, Box 4313, Baton Rouge, LA 70821-4313, phone (225) 219-3100.

Persons wishing to be included on the LDEQ permit public notice mailing list or for other public participation related questions should contact the Public Participation Group in writing at LDEQ, Box 4313, Baton Rouge, LA 70821-4313, by email at [deqmailrequest@la.gov](mailto:deqmailrequest@la.gov) or contact the LDEQ Customer Service Center at (225) 219-LDEQ (219-5337).

Permit public notices including electronic access to the proposed permit, statement of basis and associated information can be viewed at the LDEQ permits public notice webpage at [www.deq.louisiana.gov/apps/pubNotice/default.asp](http://www.deq.louisiana.gov/apps/pubNotice/default.asp) and general information related to the public participation in permitting activities can be viewed at:

[www.deq.louisiana.gov/portal/tabid/2198/Default.aspx](http://www.deq.louisiana.gov/portal/tabid/2198/Default.aspx).

Alternatively, individuals may elect to receive the permit public notices via email by subscribing to the LDEQ permits public notice List Server at: [http://www.doa.louisiana.gov/oes/listservpage/ldeq\\_pn\\_listserv.htm](http://www.doa.louisiana.gov/oes/listservpage/ldeq_pn_listserv.htm).

All correspondence should specify AI Number 122793, Permit Number General Title V Air Permit, and Activity Number PER20060001.

Herman Robinson, CPM  
Executive Counsel

0705#048

## POTPOURRI

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

Alternative Emission Control Plan—Union Carbide Corporation, St. Charles Operations

Under the authority of the Louisiana Environmental Quality Act, R. S. 30:2001 et seq., the secretary gives notice that the Louisiana Department of Environmental Quality (LDEQ) is proposing to revise the air quality State Implementation Plan (SIP) to remove the Alternative Emission Control Plan for the Union Carbide Corporation, St. Charles Operations (Taft Plant), located at Hahnville in St. Charles Parish.

On July 18, 1990, the Environmental Protection Agency approved the Alternative Emission Reduction Plan ("Bubble") for the Union Carbide Corporation, Taft Plant as a revision to the SIP (55 FR 29203). The LDEQ permit #1836T (M-1), issued April 23, 1987 and revised on May 5, 1990, was incorporated by reference into the SIP at 40 CFR 52.970 (c)(55)(i)(a).

On March 12, 2007, the LDEQ rescinded the Bubble Permit 1836T (M-1) in response to Union Carbide Corporation's request and notification that Tank 2635 is no longer in service.

A public hearing for the proposed SIP revision will be held at 1:30 p.m. on June 26, 2007, in the Galvez Building,



Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA. Should individuals with a disability need an accommodation in order to participate, please contact Vivian H. Aucoin at (225) 219-3575 or at the address listed below. Interested persons are invited to attend and submit oral comments on the proposal.

All interested persons are invited to submit written comments concerning the SIP revision no later than 4:30 p.m., July 3, 2007, to Vivian H. Aucoin, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by e-mail to [vivian.aucoin@la.gov](mailto:vivian.aucoin@la.gov).

A copy of the SIP revision may be viewed from 8 a.m. to 4:30 p.m. in the DEQ Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, LA, and the Southeast Regional Office, 645 N. Lotus Drive, Suite C, Mandeville LA 70471. The document is available on the Internet at:

[www.deq.louisiana.gov/portal/Default.aspx?tabid=2381](http://www.deq.louisiana.gov/portal/Default.aspx?tabid=2381).

Herman Robinson, CPM  
Executive Counsel

0705#047

**POTPOURRI**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

Public Hearing—Comprehensive Toxic Air Pollutant  
Emission Control Program  
(LAC 33:III.211, 223, 551, 5101, 5103, 5105,  
5107, 5109, 5111, and 5112)(AQ256S)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the department is seeking to incorporate substantive changes to the proposed amendments to the Air regulations, LAC 33:III.211, 223, 551, 5101, 5103, 5105, 5107, 5109, 5111, and 5112 (Log #AQ256S), which were originally noticed as AQ256 in the December 20, 2006, issue of the *Louisiana Register*.

The department is proposing substantive changes to address comments received during the public comment period of proposed rule AQ256. In LAC 33:III.223, Note 13 to Table 2 is revised for clarity. The exemption for electrical utility steam generating units is reinstated in LAC 33:III.551 and 5105. The definitions of *potential to emit* and *virgin fossil fuel* have been revised in LAC 33:III.5103. In LAC 33:III.5105, the exemption for the combustion of virgin fossil fuels has been reworded. Revisions for clarity are made in LAC 33:III.5107, 5109, and 5111. A footnote has been added to Table 51.2 in LAC 33:III.5112.

A strikeout/underline/shaded version of the proposed rule that distinguishes original proposed language from substantively changed language is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

A public hearing on the substantive changes will be held on June 26, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the substantive changes.

Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

Written comments regarding the substantive changes must be received no later than July 3, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by email to [judith.schuerman@la.gov](mailto:judith.schuerman@la.gov). Persons commenting should reference AQ256S in their correspondence. Copies of this proposed regulation with substantive changes can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy.

This regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs**

**§211. Methodology**

**A. Formula to Apportion Fees**

Air Toxics Permits Application Fee for major sources of toxic pollutants (based on type of facility and on rated production capacity/throughput)	Surcharge of 10% of the permit application fee to be charged when there is an increase in toxic air pollutant emissions above the Minimum Emission Rates (MER) listed in LAC 33:III.5112, Table 51.1
Air Toxics Annual Emissions Fee for major sources of toxic air pollutants (based on air toxic pollutants emitted) <sup>1</sup>	Variable
Annual Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Variable
New Application Fee (based on type of facility and on rated production capacity/throughput)	Variable
Major and Minor Modification Modified Permit Fee (based on type of facility and on rated production capacity/throughput)	Variable
PSD Application Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 50% of the application fee when a PSD permit application is being processed
"NESHAP" Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 25% of the Annual Maintenance Fee for that particular process/plant to be added to the Annual Maintenance Fee
"NSPS" Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 25% of the permit application fee to be charged for any permit application that includes the addition of new equipment subject to NSPS regulation
<sup>1</sup> Fees shall be assessed on major sources as defined in LAC 33:III.5103. Sources that have reduced emissions below major source thresholds are not required to submit annual emissions reports in accordance with LAC 33:III.5107.	

B. - B.13.e. ...

14. Air Toxics Annual Emissions Fees based on actual annual emissions that occurred during the previous calendar year shall be assessed on *major sources* as defined in LAC 33:III.5103.

15. - 15.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), LR 18:706 (July 1992), LR 19:1419 (November 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:17 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:264 (February 2000), LR 26:2444 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:

**§223. Fee Schedule Listing**

Table 1. - Table 2, Note 12. ...

Note 13. Fees will be determined by aggregating and rounding (e.g., parts of a ton less than 0.50 are invoiced as zero and parts of a ton equal to or greater than 0.50 are invoiced as one ton) actual annual emissions of each class of toxic air pollutants (as delineated in the tables in LAC 33:III.5112) for a facility and applying the appropriate fee schedule for that class. If a facility emits more than 4000 tons per year of any single toxic air pollutant, fees shall be assessed on only the first 4000 tons. In no case shall the fee for this category be less than \$132.

Note 14. - Note 20. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054, 2341, and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:613 (September 1988), LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1373 (October 1993), LR 19:1420 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21:782 (August 1995), LR 21:942 (September 1995), repromulgated LR 21:1080 (October 1995), amended LR 21:1236 (November 1995), LR 23:1496, 1499 (November 1997), LR 23:1662 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:267 (February 2000), LR 26:485 (March 2000), LR 26:1606 (August 2000), repromulgated LR 27:192 (February 2001), amended LR 29:672 (May 2003), LR 29:2042 (October 2003), LR 30:1475 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**Chapter 5. Permit Procedures**

**§551. Hazardous Air Pollutant (HAP) Control**

**Technology Requirements for New Sources**

A. - B. Similar Source. ...

C. Exemptions and Prohibitions. The requirements of this Section do not apply to:

1. electric utility steam generating units;
2. stationary sources that are within a source category that has been deleted from the source category list in accordance with Section 112(c)(9) of the Clean Air Act; and
3. *research and development activities*, as defined in Subsection B of this Section.

D. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:913 (May 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

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

**Subchapter A. Applicability, Definitions, and General Provisions**

**§5101. Applicability**

A. The provisions of this Subchapter and LAC 33:III.905 apply to the owner or operator of any *major source*, as defined in LAC 33:III.5103, unless exempted under LAC 33:III.5105.B.

B. The provisions of LAC 33:III.905, 5105.A.1, 3, and 4, and 5113 apply to the owner or operator of any stationary source that was a major source upon promulgation of this Subchapter (as of December 20, 1991), but that has achieved minor source status through reduction of emissions and reduction of potential to emit.

C. The provisions of this Subchapter do not apply to the consumer use, in a duration and frequency intended by the manufacturer, of products obtained through retail commerce, or to activities conducted on residential property. The provisions of this Subchapter do not apply to the distribution or application of pesticides.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1362 (December 1992), LR 23:56 (January 1997), LR 24:1276 (July 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

**§5103. Definitions, Units, and Abbreviations**

A. The terms in this Subchapter are used as defined in LAC 33:III.111 except for those terms defined herein as follows.

\* \* \*

*Potential to Emit*—the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of the design if the limitation or the effect it would have on emissions is specified by an existing state permit or a permit issued under a program to prevent the significant deterioration of air quality.

\* \* \*

*Source Category*—a classification of sources identified by EPA pursuant to Section 112(c) of the Federal Clean Air Act.

\* \* \*

*Virgin Fossil Fuel*—any solid, refined solid, refined liquid, or refined or natural gaseous fossil fuel with a Btu content greater than 7,000 Btu/lb that is not blended with reprocessed or recycled fuels. Group 1 *virgin fossil fuels* consist of natural gas, liquid petroleum gas, distillate fuel oil, gasoline, and diesel fuel. Group 2 *virgin fossil fuels* consist of coal, residual fuel oil, and petroleum coke.

\* \* \*

B. - B.4, std. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1362 (December 1992), LR 23:57 (January 1997), LR 24:1276 (July 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

#### **§5105. Prohibited Activities and Special Provisions**

A. - A.1. ...

2. After December 20, 1991, no owner or operator of any major source shall cause a violation of any ambient air standard listed in LAC 33:III.5112, Table 51.2, unless operating in accordance with LAC 33:III.5109.B.

A.3. - B.1. ...

2. Electric utility steam-generating units are exempt from the requirements of this Subchapter.

3. Each of the following emissions are exempt from the requirements of this Subchapter:

a. emissions from the combustion of Group 1 virgin fossil fuels;

b. emissions from the combustion of Group 2 virgin fossil fuels vented from a stack that has downwash minimization stack height or a height approved by the department; and

c. emissions from the combustion of gas streams not containing toxic air pollutants listed in LAC 33:III.5112, Table 51.1 or 51.3, that are generated by onsite operations, and used as fuel.

4. Any source, as defined in accordance with rules promulgated by the United States Environmental Protection Agency under provisions in Section 112(i)(5) of the federal Clean Air Act, that is in compliance with an enforceable commitment approved by the administrative authority\* to achieve early reductions of 90 percent or more (95 percent for particulates), or that has demonstrated early reductions of 90 percent or more (95 percent for particulates), in accordance with such rules, shall be exempt from MACT requirements under LAC 33:III.5109.A. The term of exemption shall extend until such time as the compliance extension granted by the administrative authority or the U.S. Environmental Protection Agency has expired, or until nine years from the anticipated date of promulgation of applicable federal MACT standards according to the schedule published by the U.S. Environmental Protection Agency in accordance with Section 112(e)(3) of the federal Clean Air Act, whichever date is earlier. Under no circumstances shall this provision be used to grant an exemption to a source under conditions that do not result in a net air quality benefit for the state of Louisiana, as determined by the administrative authority. Under no circumstances shall the granting of such an exemption to a source relieve any source of other obligations under state or federal law.

5. In accordance with R.S. 30:2060, except under circumstances that may reasonably be expected to pose a threat to human health, whether or not such units are in a contiguous area or under common control, in determining the applicability of emission standards or technical control standards the administrative authority shall not aggregate:

a. emissions from any oil or gas exploration or production well and its associated equipment;

b. emissions from any pipeline compressor or pump station; or

c. emissions from other similar units.

6. The emissions from the remediation of a RCRA, CERCLA, or any nonregulated inactive or abandoned waste site cleanup shall be exempt from the ambient air standards of LAC 33:III.5112, Table 51.2, upon approval of the cleanup plan by the administrative authority.

7. Emissions from the combustion of wood residue fuel from pulp and paper mills are exempt from the provisions of LAC 33:III.5109.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:2104 (December 1991), amended LR 18:1362 (December 1992), LR 21:370 (April 1995), LR 23:58 (January 1997), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

#### **§5107. Reporting Requirements, Availability of Information, and Public Notice Provisions**

A. Annual Emissions Reporting. The owner or operator of any major source that meets the applicability requirements in LAC 33:III.5101.A and emits any toxic air pollutant listed in LAC 33:III.5112, Table 51.1 or 51.3, shall submit a completed annual emissions report to the Office of Environmental Assessment, Air Quality Assessment Division, in a format specified by the department. The owner or operator shall identify on the emissions report the quantity of emissions in the previous calendar year for any such toxic air pollutant emitted.

1. Beginning with the report due in 2008, the annual emissions report shall meet the following requirements.

a. The owner or operator of any major source subject to the requirements in this Subsection shall submit a completed annual emissions report to the Office of Environmental Assessment, Air Quality Assessment Division, on or before March 31 of each year, unless otherwise directed by the administrative authority, that shall identify the quantity of emissions of all toxic air pollutants listed in LAC 33:III.5112, Table 51.1 or 51.3, for the previous calendar year.

b. All discharges to the atmosphere of a toxic air pollutant from a safety relief device, a line or vessel rupture, a sudden equipment failure, or a bypass of an emission control device, regardless of quantity, if it can be measured and can be reliably quantified using good engineering practices, must be reported to the department along with the annual emissions report. The report shall include the following information:

i. the identity of the source;

ii. the date and time of the discharge; and

iii. the approximate total loss during the discharge.

c. Annual emissions reports and revisions to any emissions report shall include a certification statement to attest that the information contained in the emissions report is true, accurate, and complete, and that is signed by a *responsible official*, as defined in LAC 33:III.502. The certification statement shall include the full name of the responsible official, his or her title and signature, the date of

the signature, and the phone number of the responsible official. The certification statement shall read:

"I certify, under penalty of perjury, that the emissions data provided is accurate to the best of my knowledge, information, and belief, and I understand that submitting false or misleading information will expose me to prosecution under state regulations."

2. Any facility required to submit a report pursuant to this Subsection shall also report in accordance with LAC 33:III.919.

#### B. Discharge Reporting Requirements

1. Facilities with unauthorized discharges shall report in accordance with LAC 33:I.Chapter 39.

2. For any unauthorized discharge of a toxic air pollutant into the atmosphere that does not cause an emergency condition, the rate or quantity of which is in excess of that allowed by permit, compliance schedule, or variance, or for upset events that exceed the reportable quantity in LAC 33:I.3931, the owner or operator of the source shall immediately, but in no case later than 24 hours, provide prompt notification to the Office of Environmental Compliance, Emergency and Radiological Services Division, SPOC, in the manner provided in LAC 33:I.3923.

#### C. ...

D. Public Notice Provisions. The administrative authority shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing before granting approval for construction or issuing any permit that would:

1. allow a permitted increase in any Class 1 or Class 2 Louisiana toxic air pollutant by an amount greater than the minimum emission rate; or

2. allow the addition of any new point source or emission unit that would emit a Class 1 or Class 2 Louisiana toxic air pollutant by an amount greater than the minimum emission rate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and 2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:890 (July 1993), amended by the Office of the Secretary, LR 19:1022 (August 1993), repromulgated LR 19:1142 (September 1993), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:58 (January 1997), LR 24:1276 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2004 (September 2000), LR 26:2460 (November 2000), LR 29:2778 (December 2003), LR 30:1673 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2447 (October 2005), LR 33:

### **§5109. Emission Control and Reduction Requirements and Standards**

A. Maximum Achievable Control Technology (MACT) Requirements

1. The owner or operator of any major source that emits or is permitted to emit a Class I or Class II toxic air pollutant at a rate equal to or greater than the minimum emission rate listed for that pollutant in LAC 33:III.5112, Table 51.1, shall control emissions of that toxic air pollutant to a degree that constitutes Maximum Achievable Control Technology (MACT) as approved by the administrative authority.

2. Compliance with an applicable federal standard promulgated by the US EPA in 40 CFR Part 63 shall

constitute compliance with this Subsection for emissions of toxic air pollutants.

3. MACT determination for sources not regulated by a federal MACT standard shall be determined by the administrative authority through the permitting process using the existing state MACT determination method or protocol.

B. Ambient Air Standard Requirements. The owner or operator of any major source that emits, or is permitted to emit, any toxic air pollutant at a rate equal to or greater than the minimum emission rate listed for that toxic air pollutant shall determine the status of compliance, beyond the source's property line, with applicable ambient air standards listed in LAC 33:III.5112, Table 51.2. (See LAC 33:III.5105.A.2.)

1. New major sources shall demonstrate compliance with an ambient air standard in an application for a permit in accordance with LAC 33:III.5111.

2. The owner or operator shall achieve compliance with the ambient air standard unless the owner or operator demonstrates to the satisfaction of the administrative authority:

a. that compliance with an ambient air standard would be economically infeasible;

b. that the source's emissions could not reasonably be expected to pose a threat to public health or the environment; and

c. that the source's emissions would be controlled to a level that is Maximum Achievable Control Technology.

3. The administrative authority shall publish a public notice of and hold a public hearing on any preliminary determination to allow a source to exceed the ambient air standard for any toxic air pollutant listed in LAC 33:III.5112, Table 51.2. Within 90 days after the close of the public hearing on the preliminary determination, the administrative authority shall make a final determination, which is subject to review on a five-year basis or at any other time deemed appropriate by the administrative authority.

4. The administrative authority shall periodically, at least every 36 months, review and update the ambient air standards listed for each toxic air pollutant in LAC 33:III.5112, Table 51.2.

#### C. Standard Operating Procedure Requirements

1. The requirements of this Subsection do not apply to emissions of any of those pollutants listed in LAC 33:III.5112, Table 51.3, or to sources complying with applicable federal standards in 40 CFR Part 63.

2. The owner or operator of any new or existing source required to report emissions in accordance with LAC 33:III.5107.A shall develop a standard operating procedure (SOP) within 120 days after achieving or demonstrating compliance with the standards specified in this Chapter. The SOP shall detail all operating procedures or parameters established by the owner or operator to ensure that compliance with the applicable standards is maintained, and shall address, but not be limited to, operating procedures for any monitoring system in place, specifying procedures to ensure compliance with LAC 33:III.5113.C.5. A written copy of the SOP must be available on site or at an alternate approved location for inspection by the administrative authority. A copy of the SOP must be provided within 30 days upon request by the department.

#### D. Compliance Timing

1. The department may take appropriate enforcement action to address the failure by an existing major source to submit a Compliance Plan or Certification of Compliance, which submittal was required by Paragraph A.1 or 2, and Paragraph B.1 or 2, of this Section as promulgated in the *Louisiana Register* on December 20, 1991, at LR 17:1204, until <INSERT DATE OF PROMULGATION OF THIS RULE>.

2. A new source shall be in compliance with the MACT regulations upon initial start-up of the source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:891 (July 1993), LR 23:59 (January 1997), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

#### §5111. Permit Requirements, Application, and Review

A. Major Source Permit Requirements. Before commencement of the construction of any new source or any modification that will result in an increase in emissions of any toxic air pollutant or will create a new point source that emits a toxic air pollutant, the owner or operator of such source shall obtain a Louisiana air permit in accordance with LAC 33:III.501 and Subsection B of this Section and in accordance with LAC 33:I.1701.

##### B. Contents of Application for a Louisiana Air Permit

1. - 2.b. ...

c. technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including a description of intended controls and monitoring procedures. Such technical information shall include estimation of emissions prior to and after installation of emission control equipment or adoption of control measures, calculations of emission estimates in sufficient detail to allow assessment of the validity of the calculations, and documentation of methods or sources of information used in these determinations. Emissions of toxic air pollutants shall be speciated to identify each toxic air pollutant emitted from each emission point at the source and to identify fugitive emissions of toxic air pollutants.

3. Each application for a permit to modify an existing major source facility shall include, in addition to the information required in Paragraph B.2 of this Section, the following information:

a. - b. ...

c. calculations of estimates of emissions before and after the changes are completed, in sufficient detail to allow assessment of the validity of the calculations;

d. for sources that have been operating in Louisiana for a period of at least five years, a listing of all violations of Louisiana air quality laws or regulations for which the owner or operator is responsible, including all violations for which a compliance schedule has been established and which have been cited in administrative enforcement actions by the department, and for which all rights of review and appeal have been exhausted. Applicants under a compliance schedule shall also demonstrate that they have made satisfactory progress in meeting the conditions of the compliance schedule. Applicants shall also provide a listing of all administrative or judicial actions taken against the owner or operator within the last five years under Louisiana environmental laws or regulations, including emergency cease and desist orders, notices of violation, compliance orders, penalty notices, or other administrative orders and any administrative or judicial proceedings that could result in such actions, and any other compliance history information requested by the administrative authority;

e. for sources that have not been operating in Louisiana for at least five years, a listing of all enforcement actions taken against the owner or operator for violations of United States federal or state environmental laws or regulations, and any other compliance history information requested by the administrative authority.

4. Any application corresponding to a major source that emits or is permitted to emit any Class I or Class II toxic air pollutant shall include a description of all federal standards (i.e., any standards promulgated by the US EPA in 40 CFR Part 63) and compliance methods applicable to units being permitted.

5. The department may request a dispersion modeling report demonstrating compliance with the ambient air standard developed by the owner or operator in accordance with the department's air toxics modeling procedures.

6. The owner or operator shall provide such other pertinent information as may be necessary for a complete understanding of the application that is being reviewed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:891 (July 1993), repromulgated LR 19:1314 (October 1993), amended LR 23:59 (January 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2461 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2447 (October 2005), LR 33:

§5112. Tables—51.1, 51.2, 51.3

Table 51.1, Class I. – Class II. ...

Table 51.1 Minimum Emission Rates Toxic Air Pollutants Class III. Acute and Chronic (Non-Carcinogenic) Toxins			
Compound	CAS Number	Synonyms	Minimum Emission Rate (Pounds/year)
* * *			
[See Prior Text in Acrylic acid - Hydrochloric acid]			
Hydrofluoric acid	7664-39-3	Fluoric acid, Hydrogen fluoride	63.0
Hydrogen cyanide	74-90-8	Cyclon	800.0
Hydrogen sulfide	7783-06-4		1,000.0
* * *			
[See Prior Text in Maleic anhydride - Zinc (and compounds) [1][12]]			

Explanatory Notes:

[1]. – [12]. ...

Table 51.2 Louisiana Toxic Air Pollutant Ambient Air Standards				
Compound	CAS Number	Class	Ambient Air Standard [14]	
			(µg/m <sup>3</sup> *) (8 Hour Avg.)	(µg/m <sup>3</sup> **) (Annual Avg.)
Acetaldehyde	75-07-0	II		45.50
Acetonitrile	75-05-8	II	810.00	
Acrolein	107-02-8	II	5.40	
* * *				
[See Prior Text in Acrylamide - Antimony (and compounds) [1]]				
Arsenic (and compounds) [1] [13]	7440-38-2	I		0.02
Asbestos (friable)	1332-21-4	I		†
Barium (and compounds) [1]	7440-39-3	II	11.90	
Benzene	71-43-2	I		12.00
Beryllium (and compounds) [1]	7440-41-7	I		0.04
Biphenyl	92-52-4	II	23.80	
Bis (2-chloroethyl) ether	111-44-4	I		0.30
1,3-Butadiene	106-99-0	II		0.92
n-Butyl alcohol	71-36-3	III	3,620.00	
Cadmium (and compounds) [1]	7440-43-9	I		0.06
Carbon disulfide	75-15-0	II	71.40	
Carbon tetrachloride	56-23-5	II		6.67
Carbonyl sulfide	463-58-1	III	582.00	
Chlorinated dibenzo-p-dioxins [2]	3268-87-9	II		.003
Chlorinated dibenzo furans [3]	51207-31-9	II		.003
Chlorine	7782-50-5	III	35.7	
Chlorine dioxide	10049-04-4	II	6.67	
Chlorobenzene	108-90-7	II	1,100.00	
Chloroethane	75-00-3	II	6,290.00	
Chloroform	67-66-3	II		4.30
Chloromethane	74-87-3	II		55.56
Chloroprene	126-99-8	II	857.00	
Chromium VI (and compounds) [1] [13]	7440-47-3	I		0.01
Copper (and compounds) [1]	7440-50-8	II	23.80	
Cresol [4]	1319-77-3	III	238.00	
Cumene	98-82-8	III	5,860.00	
Diaminotoluene	25376-45-8	II	181.00	
1,2-Dibromoethane	106-93-4	I		0.45
Dibutyl phthalate	84-74-2	II	119.00	
1,4-Dichlorobenzene	106-46-7	II	1,430.00	
1,2-Dichloroethane	107-06-2	II		3.85
Dichloromethane	75-09-2	II		212.77
1,2-Dichloropropane	78-87-5	II	8,260.00	
1,3-Dichloropropylene	542-75-6	II	107.00	
2,4-Dinitrotoluene [5]	121-14-2	II	4.76	
2,6-Dinitrotoluene [5]	606-20-2	II	4.76	
1,4-Dioxane	123-91-1	II	2,140.00	
Epichlorohydrin	106-89-8	I		83.00
Ethyl acrylate	140-88-5	II	476.00	
Ethyl benzene	100-41-4	II	10,300.00	
Ethylene glycol	107-21-1	III	2,380.00	
Ethylene oxide	75-21-8	I		1.00

Table 51.2 Louisiana Toxic Air Pollutant Ambient Air Standards				
Compound	CAS Number	Class	Ambient Air Standard [14]	
			( $\mu\text{g}/\text{m}^3$ *) (8 Hour Avg.)	( $\mu\text{g}/\text{m}^{3**}$ ) (Annual Avg.)
*** [See Prior Text in Formaldehyde - Hydrochloric acid]				
Hydrofluoric acid	7664-39-3	III	61.90	
Hydrogen cyanide	74-90-8	III	260.00	
Hydrogen sulfide	7783-06-4	III	330.00	
Maleic anhydride	108-31-6	III	23.80	
Manganese (and compounds) [1]	7439-96-5	II	4.76	
Mercury (and compounds) [1]	7439-97-6	II	1.19	
*** [See Prior Text in Methanol - Xylene (mixed isomers) [9]]				
Zinc (and compounds) [1] [10] [13]	7440-66-6	III	119.00	

Explanatory Notes:

\* - [11]. ...

[12] Includes the following compounds: Naphthalene (CAS Number 91-20-3), Methyl-naphthalene (CAS Number 1321-94-4), 1-Methyl-naphthalene (CAS Number 90-12-0), 2-Methyl-naphthalene (CAS Number 91-57-6).

[13] Zinc chromates and zinc arsenates are Class I TAPs regulated as carcinogens under Chromium VI (and compounds) and arsenic (and compounds) TAP categories.

[14] The AAS for acetaldehyde, acetonitrile, biphenyl, carbon disulfide, chloroethane, cresol, 1,4-dichlorobenzene, 2,4-dinitrotoluene, 2,6-dinitrotoluene, ethylene glycol, manganese (and compounds) was revised effective January 1, 2002.

Table 51.3 – Explanatory Note [4]. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1331 (December 1995), amended LR 22:278 (April 1996), LR 24:1277 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1237 (July 1999), LR 26:2004 (September 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

Herman Robinson, CPM  
Executive Counsel

0705#046

**POTPOURRI**

**Office of the Governor  
Office of Financial Institutions**

Public Hearing—Substantive Changes  
Residential Group Common Bonds  
and Associational Groups (LAC 10:IX.501)

A Notice of Intent concerning the above referenced proposed Rule was published in the November 20, 2006 edition of *Louisiana Register* (See LR 32:2121-2125), to establish prudential standards that will be used in reviewing an application filed by a Louisiana state-chartered credit union for a residential group common bond within a well-defined neighborhood, small community, or rural district; and adding associational groups. The notice solicited comments and requests for a public hearing. Six comments were received, and no requests were made for a public hearing. Following an analysis of the comments, the commissioner has decided to amend certain portions of the proposed Rule. The commissioner has decided amend the definition of the term *Low Income Area* in Section 501 of the proposed Rule by expanding the criteria in a manner

consistent with comments received in this regard. The commissioner also proposes to delete the term *Immediate Family* from Section 501 of the proposed Rule since state-chartered credit unions are currently allowed to define this term in their Bylaws that must be approved by the commissioner. Therefore, the following deletion and amendment are hereby recommended to the proposed Rule:

**Title 10**

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,  
INVESTMENT SECURITIES AND UCC**

**Part IX. Credit Unions**

**Chapter 5. Criteria to Organize Within Residential  
Groups, and Add Associational Groups**

**§501. Definitions**

A. ...

\*\*\*

*Low Income Area*—an area that includes any of the following (as reported in the most recently completed decennial census or equivalent government data):

a. an area that wholly consists of or is wholly located within an Empowerment Zone or Enterprise Community in the State of LA designated under Section 1391 of the IRC;

b. an area where the percentage of the population living in poverty is at least 20 percent;

c. an area in a metropolitan area where the median family income is at or below 80 percent of the metropolitan area median family income or the Louisiana median family income; whichever is greater;

d. an area outside of a metropolitan area, where the median family income is at or below 80 percent of the state-wide non-Metropolitan area median family income, whichever is greater;

e. an area where the unemployment rate is at least 1.5 times the national average;

f. an area meeting the criteria for economic distress that may be established by the CDFIs of the U.S. Treasury Department.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:

In accordance with the provisions of the Administrative Procedure Act, specifically at R.S. 49:968(H)(2), the commissioner gives notice of a public hearing to receive additional comments and testimony on these substantive amendments to the proposed Rule. The hearing will be held

at 10 a.m. on Wednesday, June 20, 2007, at the Office of Financial Institutions, which is located at 8660 United Plaza Boulevard in Baton Rouge, LA 70809. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. All interested persons are invited to submit written comments concerning the proposed substantive changes no later than June 20, 2007, at 10 a.m., to John D. Fields, Deputy Chief Examiner, Office of Financial Institutions, Post Office Box 94095, Baton Rouge, LA 70804-9095, or by hand-delivery to 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.

John Ducrest, CPA  
Commissioner

0705#027

**POTPOURRI**

**Department of Health and Hospitals  
Office of Public Health**

School Health Forms

The Department of Health and Hospitals/Office of Public Health is in support and working jointly with Department of Education in promulgating a Rule to establish standardized health forms, which are designed to eliminate the duplication of information submitted to schools and school nurses relative to health information and screenings, allergies, illnesses, sports physicals, medication administration, and prescribed procedures.

The Office of Public Health/Department of Health and Hospitals has worked jointly with the Department of Education and the School Health Advisory Committee that was established by Act 685 in the 2004 Regular Legislative Session to develop these school health forms. The proposed Rule will have an overall positive impact on the health of school-aged children, in that the Rule will ensure uniformity in the documentation of medical information submitted to schools and school nurses.

Questions may be directed to Maureen Daly, MD, MPH, Office of Public Health, 504-219-4419 or [mdaly@dhh.la.gov](mailto:mdaly@dhh.la.gov). For more detailed information and to download copies of the school health forms please visit: <http://www.dhh.louisiana.gov/offices/?ID=255>.

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

0705#081

**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
Drilling Measurements Inc.	Anse La Butte	L	A G Broussard	6	136118
La. Iron & Supply Co.	Wildcat	S	R E McDade	1	521
Shoreline Exploration Inc.	Wildcat	L	St Mary Parish School Board	1	74268
Wayne J. Spears	Richland	M	Pipes	2	118909
Wolf Production Inc.	Terrebonne Bayou	L	D Peltier et al	1	209631

James H. Welsh  
Commissioner

0705#051

**POTPOURRI**

**Department of Natural Resources  
Office of the Secretary  
Fishermen's Gear Compensation Fund**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 25 claims in the amount of \$88,281.39 were received for payment during the period April 1, 2007 - April 30, 2007.

There were 6 claims paid and 19 claims denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2917.983	8948.817	Plaquemines
2930.459	8930.331	Plaquemines
2941.969	8947.608	Plaquemines
2956.057	8948.107	St. Bernard
3010.031	8945.054	Orleans
9001.562	2920.326	Jefferson

A list of claimants and amounts paid can be obtained from Marjorie McClinton, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Scott A. Angelle  
Secretary

0705#025

**POTPOURRI**

**Department of Public Safety and Corrections  
Office of the State Fire Marshal**

Public Hearing—Boiler Construction, Maintenance,  
Inspection and General Use  
(LAC 55:V.5014 and 5069)

A Notice of Intent concerning the above-referenced proposed Rules was published on February 20, 2007 in the *Louisiana Register* (See LR 33:346-365), relative to Boiler Construction, Maintenance, Inspection and General Use. Written comments were invited, received and considered. Certain of those comments suggested substantive changes.



In consideration of such comments we propose to amend certain portions of the proposed Rules as follows: §5014 Inspection Reports to be submitted by Inspectors (Paragraph A). Inspections conducted by insurance companies are no longer required to do invoicing of any fees, therefore that paragraph was removed. No other statement is required. Section 5069 Condemned Boilers (Paragraph A). The required stamping of the Condemned Boilers ("XXX") no longer falls within the scope of a certificate inspection; therefore most of the paragraph was removed and replaced with requirements that more closely parallel current practices. (A deputy inspector or a special inspector shall notify the chief boiler inspector and submit a report within 7 calendar days.)

Accordingly, The Office of the State Fire Marshal proposes to amend the above Sections as follows.

**Title 55**

**PUBLIC SAFETY**

**Part V. Fire Protection**

**Chapter 50. Boiler Construction, Maintenance, Inspection and General Use**

**Subchapter B. Administration**

**§5014. Inspection Reports to be submitted by**

**Inspectors**

A. Repealed.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with 23:531 and 51:1424.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 33:

**Subchapter E. General Requirements**

**§5069. Condemned Boilers**

A. A deputy inspector or special inspector, after having inspected a boiler and declared such boiler unfit for further service, shall notify the chief boiler inspector and submit a written report within seven calendar days of the inspection.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 23:531 and 51:1424.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 33:

As such changes may be considered substantive by parties affected by the proposed Rules, notice is hereby given in accordance with the Administrative Procedure Act, specifically R.S. 49:968(H)(2), that a public hearing on the substantive changes will be held by the Office of State Fire Marshal on Thursday, June 21, 2007 at 10 a.m. at the Office of State Fire Marshal, 8181 Independence Blvd., Baton Rouge, LA 70806. All interested persons are invited to submit written comments concerning the proposed substantive changes no later than June 21, 2007, at 10 a.m., to William R. Owens, Manager Mechanical Safety, Office of the State Fire Marshal, 8181 Independence Blvd., Baton Rouge, LA 70806.

William R. Owens  
Chief Boiler Inspector

0705#026

**POTPOURRI**

**Department of Revenue  
Policy Services Division**

**Severance Taxes on Oil and Gas (LAC 61:I.2903)**

The Notice of Intent which proposes to amend LAC 61:I.2903, relative to the severance tax on oil, condensate or similar natural resources, natural gas liquids, and gas was published in the April 2007 publication of the *Louisiana Register*. A public hearing is scheduled for Wednesday, May 30, 2007, at 1 p.m. in the Calcasieu Room on the Second Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Because several requests have been received requesting more time to fully ascertain the effects of this Rule, the public hearing scheduled for May 30, 2007 has been rescheduled for Thursday, August 23, 2007, at 10 a.m. in the Calcasieu Room on the second floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Interested persons may submit written data, views, arguments or comments regarding this proposed Rule to Annie L. Gunn, Attorney, Policy Services Division, Department of Revenue, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Wednesday, August 22, 2007.

Cynthia Bridges  
Secretary

0705#070

**POTPOURRI**

**Department of Transportation and Development  
Sabine River Compact Administration**

**Meeting Notice**

The Spring meeting of the Sabine River Compact Administration will be held at the Sheraton Baton Rouge Convention Center Hotel in Baton Rouge, Louisiana on June 1, 2007 at 8:30 a.m.

The purpose of the meeting will be to conduct business as programmed in Article IV of the By-Laws of the Sabine River Compact Administration.

The Fall meeting will be held at a site in Texas to be designated at the above described meeting.

Contact person concerning this meeting is:

Kellie Ferguson, Secretary  
Sabine River Compact Administration  
15091 Texas Highway  
Many, Louisiana 71449  
318-256-4112

Kellie Ferguson  
Secretary

0705#001

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