

# Rules

## RULE

**Department of Agriculture and Forestry  
Forestry Commission  
and  
Department of Revenue  
Tax Commission**

**Timber Stumpage Values  
(LAC 7:XXXIX.111)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Office of Forestry, and the Department of Revenue, Tax-Commission, under the authority of R.S. 3:3 repeals §111. Stumpage Values.

### Title 7

## AGRICULTURE AND ANIMALS

### Part XXXIX. Forestry

#### Chapter 1. Timber Stumpage

#### §111. Stumpage Values

#### Repealed

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Forestry Commission and the Department of Revenue, Tax Commission, LR 24:2076 (November 1998), repealed LR 26:25 (January 2000).

Burton D. Weaver, Jr., Chairman  
Forestry Commission

Malcom Price, Chairman  
Tax Commission

0001#048

## RULE

**Department of Culture, Recreation and Tourism  
Office of State Parks**

**Rules and Regulations  
(LAC 25:IX.303-331 and 501-507)**

The Office of State Parks has amended LAC 25:IX.303-331 and 501-507 in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and the statutory provisions of R.S. 56:1681 et seq.

The amendments amend the reservation procedure and simplify rate structure to accommodate the introduction of the agency's new automated reservation system. The amendments also organize and clarify the rules, reflect the statutory name change of state commemorative areas to state historic sites, and provide for related matters.

The proposed rule will have no anticipated impact on family formation, stability, and autonomy as described in R.S. 49:972.

## Title 25

## CULTURAL RESOURCES

### Part IX. Office of State Parks

#### Chapter 3. Rules and Regulations

#### §303. Park Property and Environment

A. The provisions of the Louisiana Criminal Code (R.S. 14:1 et seq.) shall be enforced on state park property.

B. No person shall intentionally remove, damage disturb, or destroy state park property or the property of another person, without the consent of the owner. "Property" shall include structures, watercraft, movables, signs, markers, natural features, wildlife, and plants.

C. No timber may be cut, destroyed, or damaged except as necessary to meet established park management criteria, including insect control, public safety, and approved park construction. No timber cutting or removal may occur without the written permission of the assistant secretary or his designee.

D. No building, structure, or other park feature may be altered, erected, or constructed without written consent of the assistant secretary or his designee.

E. The assistant secretary shall, upon recommendation of the site manager, approve a carrying capacity for each state park area. Once a carrying capacity has been reached, or when additional visitors would adversely impact the park, the site manager is authorized to close the park site to incoming visitors.

F. Food, beverages, and smoking are prohibited in structures or areas containing historical furnishings or displays except in designated meeting rooms and assembly locations, or in conjunction with park programs.

G. ...

H. No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on any park.

I. No plant material may be planted or otherwise introduced on any state park without the written approval of the assistant secretary or his designee.

J. Visitors to historic sites are prohibited from leaving designated interpretive trails and may not walk on historic earthworks, fortifications, mounds or like features without specific permission of the site manager.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 16:1051 (December 1990), LR 26:25 (January 2000).

#### §305. Vehicle Use

A. The provisions of the Louisiana Highway Regulatory Act (R.S. 32:1 et seq.) and any rules and regulations promulgated thereunder shall be enforced on state park property.

B. Automobiles, trucks, motorcycles, bicycles, recreation vehicles, or any other wheeled vehicles must be operated only on those roads, lanes, or byways designated for

vehicular park traffic unless otherwise authorized by the site manager.

C. Vehicles, including recreational vehicles, motorcycles, and boat trailers, shall be parked only in designated parking areas unless otherwise authorized by the site manager.

D. No person shall operate a vehicle in excess of 15 miles per hour on park property unless otherwise posted.

E. Only vehicles that have been properly licensed by the appropriate regulatory agencies may be operated on the public roads of state parks. Exceptions to this provision may be granted in advance on a case by case basis by the site manager.

F. No person shall clean, service and/or repair any vehicle on state park property except in emergency situations and in designated areas.

G. Vehicles will be considered abandoned when left unattended for more than seven consecutive days unless the proper permit or advanced written approval is granted by the site manager.

H. No person shall remove any barrier to gain access to a restricted area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 14:772 (November 1988), LR 26:25 (January 2000).

### **§307. Water Craft**

A. Federal, state, and local laws, rules and ordinances related to the use of water craft shall be enforced. The operation of all water craft in and on all waters or streams, on or adjacent to park property, must be done in a careful and reasonable manner, and is subject to the rules of safety imposed by the laws of Louisiana and by the United States Coast Guard.

B. Every owner and operator of a motor boat, vessel or other water craft shall carry at least one life preserver, life belt, ring buoy, or other device of the sort prescribed by state and federal law for each person on board so placed as to be readily accessible.

C. Boats shall be launched only from designated boat ramps or launching areas within a park.

D. Persons renting boats must return the boat to the original docking location after use, and secure from unauthorized use.

E. No boat may be operated in a designated swimming area or in any other area designated by signs or any area restricted from boat operation or docking.

F. Boats left docked and unattended must be properly secured in designated areas only. The Office of State Parks will not be responsible for theft or damage to boats, equipment or supplies left unattended.

G. Boats will be considered abandoned when left unattended for more than seven consecutive days unless the proper permit or advanced written approval is granted by the site manager.

H. Commercial boats (defined as any craft capable of carrying five or more persons for hire, any craft having a water displacement of five tons or more, whatever the length, or any craft from which commercial activities are conducted involving shrimping, crabbing, fishing, etc.) are prohibited from using any state park facility without the

written consent of the assistant secretary. Loading or unloading of materials, boarding of persons, operating power equipment and non-emergency repair work are prohibited.

I. All or portions of water bodies adjacent to boat ramps, docks, swimming areas, boathouses, cabins, picnic pavilions, or other facilities shall be designated No WAKE AREAS. Signs and/or buoys will mark the water bodies or portions thereof so designated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 16:1051 (December 1990), LR 26:26 (January 2000).

### **§309. Horseback Riding, Livestock, Animals and Pets**

A. Horseback riding is allowed only in specially designated areas and/or as part of special program events approved in advance by the assistant secretary.

B. Dogs and other pets are not allowed to run at liberty in the parks. Any pet brought within the park area must be leashed, caged or crated, and will not be permitted within buildings or other enclosed structures of the park (the leash is not to exceed five feet in length). Only seeing-eye dogs will be permitted near designated swimming areas and in overnight facilities. Owners of pets causing any injury or damage will be fully responsible.

C. No person shall allow his livestock to run or graze on park property, except in specially designated areas and/or as part of special programs or events approved in advance by the assistant secretary.

D. No pets are allowed on state preservation areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks in LR 8:633 (December 1982), LR 12:89 (February 1986), amended LR 14:772 (November 1988), LR 26:26 (January 2000).

### **§310. Litter, Sanitation and Health**

A. No person shall throw, drop, deposit, discard, permit the intentional or accidental ejection, emission, or escape of, or otherwise dispose of litter upon any state park property, except: When litter is placed into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon state park property or water bodies.

B. No person shall drain or dump refuse waste from any trailer or other vehicle except in places or receptacles provided for such uses.

C. Cleaning fish or food, or washing clothing or articles of household use can only be done at designated areas.

D. No person shall discharge or allow to be discharged into any waters of the state any waste or substance of any kind that will tend to cause pollution of water used for human consumption or swimming.

E. Depositing, except into receptacles provided for that purpose, any body waste in or on any portion of any comfort station or any public structure, or depositing any bottles, cans, cloth, rags, metal, wood, stone, or other damaging substance in any of the fixtures in such stations or structures is prohibited.

F. No person shall use refuse containers or other refuse facilities for dumping household or commercial garbage or trash brought to a park.

G. Burial of garbage, litter, or dead animals on park property is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 14:772 (November 1988), LR 26:26 (January 2000).

**§311. Repealed. (provisions moved and amended in §331)**

**§312. Fires**

Fires shall be built only in places specifically designated for that purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 26:27 (January 2000).

**§314. Swimming**

A. Swimming is permitted only at designated places, and at the swimmer's own risk.

B. All children under 12 years of age must be accompanied by an adult at any swimming area.

C. The capacity of all pools and beach areas is determined, regulated and enforced by the site manager.

D. Glass containers of any kind are prohibited within any perimeter boundaries of pools, enclosed swimming areas, enclosed beach areas, and beach parks.

E. No food or drinks are allowed within enclosed pool and enclosed beach areas with the exception of concessions sold at the Bayou Segnette State Park wave pool.

F. Only Coast Guard approved Type I or Type II Personal Flotation Devices are allowed at swimming areas with the exception of flotation devices provided by the Office of State Parks at the Bayou Segnette State Park wave pool.

G. No swimming at any beach will be permitted from sunset to sunrise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 16:1051 (December 1990), LR 26:27 (January 2000).

**§315. Amplified Sound Equipment**

A. No person shall play amplified musical instruments within park areas except when approved by the assistant secretary or his designee. No person shall play non-amplified musical instruments, radios, televisions, tape players and similar equipment in such a manner which could disturb other visitors

B. No person shall operate or use any public address systems, whether fixed, portable, or vehicle mounted, without prior approval of the assistant secretary or his designee.

C. Remote public broadcast activities must be approved by the assistant secretary or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 26:27 (January 2000).

**§317. Disorderly Conduct**

A. Disorderly or boisterous conduct is forbidden.

B. The site manager and his designees are authorized to control the use and consumption of alcoholic beverages in a park. The consumption of alcoholic beverages may be allowed to the extent that such activity does not adversely affect the use and enjoyment of the park by other park users.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 26:27 (January 2000).

**§319. Business Activities**

A. No one may sell or offer for sale any merchandise or service in a park area without the written consent of the assistant secretary or his designee.

B. No one may distribute, post, place, or erect any advertising device in the park area without the written consent of the assistant secretary or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 26:27 (January 2000).

**§321. Fines and Enforcement of the Rules and Regulations**

A. In addition to any other penalty provided by law, persons violating these rules and regulations are subject to administrative fines for each violation of not less than \$15 nor more than \$250 (R.S. 56:1689), eviction from the park, and/or restitution to the state for damages incurred.

B. Site managers and other park agents, including rangers, watchmen, and guards, may be certified as "Park Wardens." State Park wardens, in addition to the authority otherwise conferred by law upon such officers, are vested with the same authority and powers conferred by law upon regular law enforcement officers of this state. State park wardens have specific authority and responsibility to enforce all rules, regulations, and laws within the limits of their jurisdiction.

C. No person shall enter a park:

1. when the park is closed;
2. without proper registration;
3. in addition to any penalties otherwise provided by law, any person violating this subsection will be subject to an administrative fine of not less than \$25.

E. Park users may be required to furnish specific information upon registration, including but not limited to, vehicle license plate number, a driver's license number, state of residency, place of employment, date of birth, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 26:27 (January 2000).

**§323. Repealed. (provisions moved and amended in §315)**

**§325. Repealed. (provisions moved and amended in §317)**

**§327. Repealed. (provisions moved and amended in §319)**

**§321. Repealed. (provisions moved and amended in §321)**

**§330. Day Use**

A. Day-use facilities such as barbecue pits, tables, etc., which do not require prior reservations shall not be reserved by placing personal articles at these facilities prior to their immediate use. This includes firewood, ice chests, or any other personal property. The use of all such facilities is on a first come, first served basis.

B. The use of any facility in a park area is subject to certain conditions or policies set down on an individual facility basis by the site manager. These conditions or policies must be approved in writing by the assistant secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 26:28 (January 2000).

**§331. Overnight Use**

A. General Provisions - Overnight Use

1. Any overnight use of a park requires a written permit or cash receipt from the park. Overnight facilities are reserved for the exclusive use of persons properly permitted for the use of overnight facilities and their guests. An exception to this rule will be made for volunteers camping at a state historic site as part of an approved overnight encampment program.

2. Permittee may not transfer or assign any use permit nor sublet any facility or part thereof.

3. The site manager has the authority to require registration of every person occupying a campsite or overnight facility.

4. Any permit may be terminated by the assistant secretary or by the site manager upon the violation of any established park rule, regulation, or any condition of the permit.

5. Lock combinations are issued for the personal use of the permittee, who is prohibited from allowing others to use the lock combination, or otherwise making the facilities open so that others not covered by the permit may enter or leave the facility or area.

6. All overnight facilities have a check in time of 3 p.m. and a check out time of eleven a.m., except campsites, which have a check in time of two p.m. and a check out time of one p.m. Extensions may be approved by the park manager. Subject to availability, overnight facilities may be available to the user before the check in time.

7. Established time schedules (check in and check out) are strictly enforced. Failure to comply without advanced approval of the park manager may result in additional charges and denial of any future use of the facility.

8. Overnight users must maintain a reasonably quiet facility between the hours of ten p.m. and six a.m.

9. No overnight user may erect or display unsightly or inappropriate structures or features which, in the opinion of the park manager, may create a disturbing or otherwise unpleasant condition detrimental to the general park use.

10. No permittee may repair or install any park equipment or furnishings unless authorized and supervised by the park manager.

11. In no case will public residency be allowed in a state park.

12. Parking for boat trailers and additional vehicles may be allowed at the discretion of the site manager or his designee, subject to individual site suitability for such purposes.

13. Permittee waives and releases all claims against the state of Louisiana for any damage to person or property arising from the privileges granted by any use permit.

B. Camping

1. With the exception of a campground host, overnight camping and group camp, lodge and cabin use are limited to fifteen (15) consecutive days. At the site manager's discretion, and subject to availability, overnight camping may be extended on a weekly basis. No campsite may be vacated for longer than a 24 hour continuous period under any permit agreement.

2. State parks' campgrounds are intended for tents and recreational vehicles only.

3. Campsite occupancy is limited to six persons. At designated group camping areas occupancy limits are set by the site manager or his designee.

4. Campsite configurations within the system vary in size, length, and surfacing materials. Camping spurs are designed to accommodate one camper/pop-up trailer with tow vehicle or one motorized camper and additional vehicle. Additionally, many parks will have designated tent pads adjacent to the spur. The site manager or his designee will have the authority to evaluate additional possible combinations for on site approval. Due to the numerous possible potential combinations, the following are to be used for general guidelines subject to variance by the site manager or his designee:

a. one camper trailer with tow vehicle (may include pickup camper), one large tent or two small tents;

b. one motorized camper with additional vehicle (may include pickup camper), one large tent or two small tents;

c. one pop-up camper with two vehicles (may include pickup camper), one large tent or two small tents;

d. one pickup camper with additional vehicle, one large tent or two small tents;

e. two vehicles and tent combinations not to exceed three tents.

5. The following camping combinations are applicable only to Grand Isle State Park:

a. one passenger vehicle and two tents (family unit only);

b. one passenger vehicle and one camping trailer;

c. one van-type camping vehicle and one tent;

d. one van-type camping vehicle and one camping trailer;

e. one pickup truck camper and one tent;

f. one pickup truck camper and one camping trailer;

g. one motorized camper (or bus) and one passenger vehicle.

*Beach campsites cannot be reserved.*

### C. Cabins, Lodges, other Overnight Facilities

1. A written inventory of movable equipment and furnishings is posted in each overnight structure or will be furnished to the visitor. It is the visitor's responsibility to check the inventory upon occupancy. The visitor must report to the park manager any discrepancy between the actual inventory and the printed inventory. The visitor may be assessed the cost of items which, if not reported as missing or damaged upon occupancy, are missing or damaged when the structure is vacated. Failure to reimburse the Office of State Parks for any missing property or damage to property may result in denial of future use of park facilities.

2. Facility furnishings cannot be moved without the permission of the site manager.

3. Upon termination of any use permit, the facility must be delivered up in good repair and in the same condition in which it was found. Where applicable, all doors and windows will be closed, all water taps shut, and all fires extinguished. Permittees will be responsible for any and all damages resulting from their use of the facility. Failure to comply may result in denial of future use of the facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 14:772 (November 1988), LR 16:1051 (December 1990), LR 26:28 (January 2000).

## Chapter 5. Procedures and Fees

### §501. Operating Schedule

#### A. State Parks

1. All state parks that do not have a boat launch open at 7 a.m. and close at 9 p.m. year round. All state parks that have a boat launch capable of launching a motorized vessel and ones that are not designated for campers only, will open at 6 a.m. and close at 9 p.m. year round. A park attendant is on duty Fridays, Saturdays, and on days preceding holidays until 10 p.m. to register incoming campers and other overnight users only. Based upon user demand, and available staff and other resources, the hours of operation at each park site may be varied at the direction of the assistant secretary or his designee.

2. Pools and enclosed beach areas are usually operated from Memorial Day weekend through Labor Day weekend, subject to an operating schedule per individual park. All pools are closed on Mondays, except holidays.

B. State Historic Sites: Year-round schedule: Open 9 a.m.-5 p.m.; closed Christmas Day, New Year's Day, Thanksgiving Day.

C. State Preservation Areas: Year-round schedule: Open 9 a.m.-5 p.m. Closed Christmas Day, New Year's Day, Thanksgiving Day.

D. Temporary Operating Schedule: Some areas are not fully operational pending completion of programs or facilities. Also, because of budgetary or legislative mandates, operational schedules may change. Visitors should contact the site manager or the administrative office for information regarding sites with part-time operating hours and special group tour arrangements.

E. The assistant secretary or his designee may direct the closing of a park to public use when or if any natural or man-made occurrence has affected, or is expected to affect, the operation and management of the park to a degree that normal public use and enjoyment are altered, or when such use may impair the health, safety, and well-being of the public or employees of the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 14:772 (November 1988), LR 16:1051 (December 1990), LR 26:29 (January 2000).

### §503. Fees and Exemptions; Day-Use

#### A. - A.2 ...

a. St. Bernard SP swimming pool fee is \$2 per person- no entrance fee.

b. Bayou Segnette SP wave pool - in addition to the entrance fee and all other user fees: Adults (over 48") \$8 per day, Children (under 48") \$6 per day. The price includes one flotation device per person. Discount coupons available when purchased in quantity lots.

3. A self-service fee system may be used to collect user fees on areas normally served by an entrance control station. During these times all reservation guests or others requiring registration shall sign in at the office during the normal business hours or with a ranger placed in the entrance station at hours when the office is not operated.

#### B. State Historic Sites General Admission Fees

1. An admission fee of \$2 per adult is charged for all state historic sites (exception: Locust Grove and Los Adaes, which have no admission charge). There is no admission charge for children age 12 and under. Admission entitles visitors to all facilities and regular programs which may be offered at the historic site. Special programs and events may include special admission rates. The payment of the admission fee at one historic site entitles guests to enter all historic sites on the same day with no additional charge. The receipt from the first site must be presented for admission to subsequent sites.

2. Organized groups of 10 or more are requested to notify the park manager in advance of their arrival. There is no additional fee for SHS visitors arriving by bus.

#### C. ...

#### D. Boating

1. Rental boats are available in most parks. The use of motors on these boats is limited to the manufacturer's recommended horsepower capacity.

2. The standard rate for rental boats with three life jackets and two paddles is \$10 per boat per day. Additional life jackets are available at a rental fee of \$1 each per day.

#### 3. ...

4. At some sites rental boats, kayaks, canoes and other water vessels may be available through the park or through a concessionaire. Visitors should contact the site to check availability and rates.

E. Fishing Piers. A fishing pier extending into the Gulf of Mexico is located at Grand Isle East State Park. A fee is charged for day or night fishing on the pier in addition to the regular day-use or overnight-use fees. Fees are \$2 per person over 12 years of age and \$1 for children 12 years of age and younger.

## F. Group Rental Pavilions

1. Group rental pavilions are available at most state parks and state historic sites. The rental rate varies, depending upon the size and location.

2. Exclusive use of a group pavilion can only be made by a rental permit and payment of a rental fee. These group pavilions can be reserved in advance with payment of the rental fee.

3. Reserved pavilions will be posted, indicating the name of the party and date of use. When such pavilions are not so posted or reserved, they are available to the park user on a first come, first served basis as any other non-reserved park pavilion.

4. ...

5. The carrying capacity of a group rental pavilions is based on its size, facilities and available parking, and may not be exceeded as determined by the site manager.

6.a. Type I Pavilion. These pavilions, usually located in the day-use area, accommodate a standard of 40 people. Reserve rental rate is \$40 per day.

b. Type II Pavilion. These pavilions, usually located in the day-use area, accommodate 60 people. Reserve rental rate is \$60 per day.

c. Type III Pavilion. These pavilions are usually separated from the day-use area, affording more group privacy than the other pavilion types. They may accommodate 100 people. Reserve rental rate is \$100 per day.

G. Meeting Rooms. Meeting rooms used to accommodate meetings and functions of private groups, clubs and other organizations are available at a rate of \$125 per day during normal park operating hours. Kitchen facilities may be used, if available.

## H. Exemptions

1. Senior Citizens. Any citizen of the state of Louisiana who is identified as sixty-two years of age or older shall be exempt from paying the general admission charge to any state park in Louisiana. Any person accompanying a citizen of the state of Louisiana who is sixty-two years of age or older, as the driver of a single, private, noncommercial vehicle, or alternatively, the exempted persons spouse and children accompanying him or her where entry to the area is by any means other than private, noncommercial vehicle, shall be exempt from paying the general admission charge to any state park in Louisiana. (R.S. 56:1692)

2. ...

3. School Groups - Any child who is on a field trip conducted as part of the curriculum of the school and any classroom teacher, parent, bus driver and any other person accompanying a school child on such a field trip are exempt from paying the general admission charge to any site.

4. ...

5. Non-Profit Community Home Based Organization - Any child age 18 or under who is retained in the legal custody of the state through a bona fide contractual service agreement with a public, non-profit community home based organization or "provider" shall be exempt from paying the general day-use entrance fees or any other day-use fee at any site. Such use must be in conjunction with an organized group outing or event sponsored and supervised by the public, non-profit organization or "provider".

a. Certification of the eligible organization or "provider" must be made in writing to the Office of State Parks, and the agency shall in turn recognize such certification prior to eligibility for this exemption.

b. This exemption shall not be applicable to day-use functions at any state park overnight facility such as group camps, cabins, campgrounds, etc.

## I. Annual Day-Use Permits

1. Annual Day-Use Permits are available at a cost of \$30 per year. This permit, in the form of a wallet I.D. card, allows the holder individually or as a passenger in a single, private non-commercial vehicle entry to all sites in lieu of the normal day-use fee. All people accompanying a permit holder as occupants in a single, private non-commercial vehicle in which the permit holder is a passenger or driver are also admitted without charge.

a. The wallet permit may be exchanged for a vehicle decal which shall be permanently affixed to a vehicle, if this is a more convenient permit arrangement.

b. The Annual Day-Use Permits are valid for a period of one year beginning January 1 and ending December 31 annually. Permits may be obtained at any site.

2. The annual day-use permits are valid for exemption of the general admission day-use charge only.

J. From time to time, as deemed appropriate by the assistant secretary, special programs, occupancy regulations, or discounts on user fees may be offered in order to encourage visitation. These special promotional offers must be reviewed and reauthorized annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1693.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 14:772 (November 1988), LR 16:1051 (December 1990), LR 26:29 (January 2000).

## §504. Fees and Exemptions: Overnight Use

### A. Camping Fee

1. An improved campsite rents for \$12 per night. An unimproved campsite rents for \$10 per night. For information regarding campsite reservation fees, see Reservation Policy, §505.

2. Each campsite is restricted to use by one camping unit. Improved sites are equipped with picnic table, grill, electricity and water hookups.

3. Designated primitive areas accommodating organized groups (Boy Scouts, Girl Scouts, etc.) are charge of \$1 per person, per night, except the tepee area at Fontainebleau State Park where the charge is \$30 per group per night. Capacity level will be set by the site manager.

B. Rally Camping Areas are those designated and reserved for use by organized groups of overnight campers. These areas differ from the normal state park campgrounds since they are available for group use only.

### 1. Fees

a. A fee of \$50 per night is assessed to the group for the exclusive use of the area, and each individual camper rig is also charged the improved campsite rate.

b. The day-use fee for a rally campground is \$50 per day for the group, and in addition the standard day-use entrance fee is charged per vehicle.

3. Carrying Capacity - A maximum carrying capacity for rally sites is established by individual parks, and

information concerning these capacities is available through the individual park offices.

C. Golden Age/Golden Access Permit. Any citizen of the United States who possesses a Golden Age and/or Golden Access Passport issued by an agency of the United States, pursuant to 16 U.S.C. Section 460, and any person accompanying the holder of the passport in a camper rig as defined in Chapter 3, Subsection 311 H, of the rules and regulations of the Office of State Parks will be entitled to a 50 percent discount on any overnight campsite rentals. Proof of identification will be required.

D. Backpacking

1. Backpacking is available only at Chicot State Park at the present time. A permit is required for all overnight backpacking use and may be obtained at the park entrance station.

2. Each person will be assessed a fee of \$1 per night. A copy of the backpacking regulations can be obtained at the park entrance station.

3. Backcountry camping or backpacking is defined as camping in undeveloped areas of the park where there are no designated campsites and no facilities provided. These areas are reached by backpacking or by non-motorized boats.

E. Canoe Camping

Canoe camping at primitive campsites is available at Lake Fausse Pointe State Park and Lake Claiborne State Park. The unimproved campsite rental fee of \$10 is charged for use of these areas.

F. Cabins and Lodges

1. Cabins

Classification	Overnight Rate	Bedding Accommodations	Maximum Capacity
Deluxe	\$65	6	8
Modular	\$60	6	8
Standard	\$50	4	6
Rustic	\$45	4	6

2. Park Lodges - These are large overnight structures equipped with kitchen, bath and sleeping facilities and can accommodate a large family or several family groups.

Classification	Overnight Rate	Bedding Accommodations	Maximum Capacity
Large	\$90	12	14
Small	\$90	7	9

G. Group Camps

Group camps are available at certain parks for organized group use. The capacity, type of facility, and rates are as follows:

Classification	Overnight Rate	Day Rate	Maximum Capacity
Class III	\$300	\$200	100+
Class II	\$125	\$75	50+
Class I	\$75	\$50	30+

1. Group camps may be reserved for day use only at a basic rate. In addition, the normal day-use entrance fee will be assessed each vehicle entering the group camp area.

2. Beds, kitchen and necessary cooking ware are furnished. User must furnish his own tableware (silver, dishes, glasses, etc.), bed linens, pillows, towels, and toilet necessities.

H. Special Research Dormitory Facilities

1. Purpose. The primary purpose of the research dormitory is to provide living space and sleeping accommodations for professional researchers and students who are actively conducting on-site research. The dormitory can be used on a first come, first served basis by other individuals who meet the requirements as set forth in this policy statement.

2. Eligible Users. The dormitory is available to college students, professional archaeologists and other scientists and professionals who are studying the site and/or actively conducting research which relates to or directly involves the site or nearby sites of significance.

*Requests for use of the dormitory by individuals or groups not meeting the above criteria will be reviewed to determine merit and appropriateness.*

3. Application Process. Requests for use of the dormitory must be made by letter addressed to the site manager. The site manager and the assistant secretary will review the request and respond in writing to the applicant.

4. Facility Use Agreement

a. All parties granted permission to use the dormitory must execute a Facility Use Agreement.

b. The user must execute the agreement and return it to the site manager before occupying the dormitory.

5. Research Dormitory Fees. All user groups, unless otherwise authorized by the assistant secretary, will be required to pay a \$100 per night fee for overnight use. The rental fee must be received within 10 days after the user receives written approval to use the dormitory.

6. Research Dormitory Occupancy Requirements

a. Registration with the site manager is required of all boarders before occupying the dormitory. This information will include name, organization, address, and home or business phone numbers.

b. Keys to the dormitory can be obtained from the site manager. One group leader will assume responsibility for the keys and return them to the manager before leaving.

c. General cleanup of this facility will be the responsibility of the user. The user will follow established cleanup and housekeeping procedures distributed by the manager.

d. Research Dormitory Check-out time is 2 p.m.

7. Special Conditions. All programs and activities conducted by groups or individuals using the dormitory must be approved in writing by the site manager.

8. The site manager has the administrative responsibility for all matters relating to the daily operation of the dormitory building and site facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1693.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 12:828 (December 1986), LR 26:30 (January 2000).

## **§505. Reservation Policy**

### **A. General Provisions**

1. Reservations may be made for all facilities at state parks by calling the State Parks Reservation Call Center. Overnight and day-use facilities, including cabins, lodges, group camps, camping sites, rally shelters, meeting rooms and pavilions may be reserved 11 months in advance. For example, if a park user wants to use a facility on July 2, he may make the reservation no earlier than August 2, or the first business day after August 2, of the prior year.

2. The Call Center will operate 8 a.m. to 4:30 p.m., Monday through Friday. The Call Center will close for state holidays. Based upon demand, the Center's hours may be extended by the assistant secretary or his designee. Reservations may also be made on-line.

3. Reservations are accepted only from person 18 years of age or older. All persons under 18 years of age must be accompanied by adults when using reserved facilities.

4. Deposit in full must be received within 10 days of the date the reservation is made otherwise the reservation is canceled. Payment may be made by credit card, in-state personal check or money order. If the reservation is made within fourteen days or less of the usage date, payment will be made by credit card only.

5. A cancellation of a reservation initiated by park users is subject to a surcharge. The cancellation fee is a minimum of \$10 per facility. If the reservation is canceled within fourteen days of the first day of intended use, the cancellation fee is the cost of one day's use or \$10 per facility, whichever is more.

6. In the event reservations must be canceled for maintenance or emergency reasons by park staff, the rental fee will be refunded in full. Requests for waivers of the cancellation fee must be made in writing to the assistant secretary or his designee and will be granted only for extreme situations.

7. Reservations may be transferred from one date to another or one site to another based on availability for a \$10 transfer fee.

8. For cabins, lodges, group camps, rally shelters and camping a two day minimum reservation is required for weekends. The minimum may be met by reserving the facility on Friday and Saturday nights, on Saturday and Sunday nights or for all three nights. If facilities are not reserved in advance, they may be rented on weekends for one night to walk-up users using the facilities that day. Exceptions may be granted by the Assistant Secretary or his designee.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:1681-1693.

**HISTORICAL NOTE:** Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 14:772 (November 1988), LR 16:1051 (December 1990), LR 26:32 (January 2000).

## **§506. Refunds**

A. Refunds will not be issued to visitors evicted for enforcement or disciplinary reasons.

B. Refunds may be made at the park upon approval of the site manager or his designee for those fees paid at the park for the following reasons:

1. in emergency situations where the park must be closed due to natural or man-made emergencies (water shortage, fire, weather, and equipment failure);

2. when a user chooses to leave a park before use of any facilities;

3. when the user chooses to leave a park before utilizing facilities for the total reservation period, the unused reservation period amount will be refunded minus the cancellation fee detailed in §505.1. An exception would include weekends which require a minimum reservation period.

C. All park-issued refunds will require that the visitor present a valid paid receipt for the amount of the requested refund.

D. All advance reservation refunds must be issued through the administrative office in accordance with §505.1.

E. Visitors are encouraged to request a temporary visitor pass for the purpose of inspecting the park facilities prior to an anticipated visit.

F. Refunds of day use fees are not granted when a visitor, by his own choosing, leaves the park as a result of inclement weather.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:1681-1690.

**HISTORICAL NOTE:** Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 12:828 (December 1986), LR 26:32 (January 2000).

## **§507. Special Uses and Restrictions**

A. - B. ...

### **C. Use Restrictions**

1. A State Historic Site is an area which possesses a historical, cultural, or memorial significance when judged on a statewide basis. Activities and uses of historic sites are limited to those appropriate to the significance of each site as defined by the master plan and interpretive prospectus of the unit.

2. It is necessary that development on a state historic site be limited to that which is essential for visitor accommodation and enjoyment of the area's theme or feature. Day-use facilities will be limited to activities that do not conflict with the historical theme and confined to section(s) set aside for such purposes. Historic zones will be established to protect the resource and insure most conducive use of each state historic site. Space outside of the historic zone(s) and maintenance area(s) may be set aside for recreational use at the discretion of the site manager.

3. The atmosphere created on the historic site is as important as the artifactual evidence. In order that the greater interest and primary function of the area be served, it is necessary to restrict certain incompatible activities from the sites. Any sport or recreational activity that does not contribute to a greater understanding of the theme of the area is prohibited within all historical zones of any state historic site. Recreation zones appropriate for such use may be designated by the site manager if space permits. No organized league activities will be allowed on the grounds of any state historic site.

4. It has also been determined that the use of state historic sites for such activities and events as fairs, circuses, carnivals, amusement rides, and other promoter sponsored,

commercial activities and events is not deemed in the best interest of the state historic sites. Such use fails to achieve the intent outlined in the preservation purpose and may increase the potential for serious damage to the quality and character of the area, adversely affecting the experience of the visitor. At Rebel State Historic Site, because of the theme of the area, musical events sponsored by promoters will be permitted with the approval of the assistant secretary or his designee.

5. Organizations offering support to historic sites, parks, and preservation areas either one in particular or on a general basis, such as historical societies, friends groups or service groups, may be permitted special functions at a site if a written request is made and written permission is obtained from the assistant secretary. Such functions may not be specifically for the benefit of an individual, but must be held to benefit the site, either directly or indirectly, through greater public awareness in of the site or history of the area, or to assist the agency in the fulfillment of its mission and purposes.

**D. Passenger Bus Restrictions**

1. In an effort to facilitate control of the day-use carrying capacity for state parks (excluding state historic sites), no buses nor occupants thereof shall be admitted to state parks except by special permit for any day-use activities on weekends or holidays during the period Memorial Day weekend through Labor Day.

2. Special Bus Use Permits - Any access to state parks by bus transportation on weekends or holidays during the period between Memorial Day and Labor Day will require a special bus use permit. The application for the permit must be submitted to the site manager at least three days prior to the proposed use date along with the groups' proof of \$1,000,000 liability insurance naming the Department of Culture, Recreation and Tourism and the Office of State Parks as additional insureds, and proof of \$500,000 automobile or bus liability insurance. Children traveling to state parks must be chaperoned by adults. The permit, if approved, does not cover other special day-use charges (rental pavilions, etc.).

**E. ...**

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:1681-1690.

**HISTORICAL NOTE:** Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 12:828 (December 1986), LR 26:32 (January 2000).

Dwight Landreneau  
Assistant Secretary

0001#049

**RULE**

**Department of Economic Development  
Racing Commission**

**Substance Abuse and Drug-Free Workplace Program  
(LAC 13:IX.Chapter 1)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and also in accordance with Executive Order MJF 98-38, R.S. 49:1001, et seq., and

R.S. 4:141, et seq., the Louisiana State Racing Commission hereby adopts the following.

**Title 13**

**ECONOMIC DEVELOPMENT**

**Part IX. Office of the Racing Commission**

**Chapter 1. Substance Abuse and Drug-Free  
Workplace Program**

**§101. Philosophy**

A. The Louisiana State Racing Commission (LRC) is totally committed to deterring substance abuse or use which imperils the health and well-being of our employees and the citizens of this state. To accomplish this, the LRC hereby adopts these Substance Abuse and Drug-Free Workplace rules which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety, reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of the LRC and its employees.

B. The LRC's philosophy is consistent with the state of Louisiana's long-standing commitment to establishing a drug-free workplace. To deter the use of illegal drugs by employees of the state of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for state employees. Further, the Governor of the state of Louisiana recently issued Executive Order 98-38 providing for the promulgation, by executive agencies, of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with R.S. 49:1001, et seq. The LRC fully supports these actions and is committed to a drug-free workplace.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Racing Commission, LR 26:33 (January 2000).

**§103. Applicability**

A. These rules apply to domicile employees, field auditors and appointees of the LRC, as well as potential employees and appointees to those positions.

B. Following a job offer, potential employees and potential appointees will be required to submit to pre-employment drug testing. All employees/appointees are subject to post-accident/incident, reasonable suspicion and return-to-duty/rehabilitation monitoring drug and alcohol testing. Employees who incumbent safety-sensitive positions and applicants who apply for safety-sensitive positions are subject to both random and pre-selection drug and alcohol testing. Finally, prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position, an employee is required to undergo drug and alcohol testing. A list of the safety-sensitive positions within the LRC is contained within §121.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Racing Commission, LR 26:33 (January 2000).

**§105. Requirements**

A. To maintain a safe and productive work environment, all LRC employees are required to:

1. report for duty in the physical and emotional condition which maximizes his/her ability to perform assigned tasks in a competent and safe manner;

2. promptly and cooperatively submit to drug/alcohol testing when required by a supervisor or appointing authority;

3. notify a supervisor on the first scheduled workday following any arrest or conviction for DWI, drug or drug-related offense which occurs on or off duty.

B. The LRC prohibits the use, abuse and presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in the bodies of its employees while on duty, scheduled on-call or engaged in LRC business, on or off LRC/state premises. The presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in a state vehicle while on or off duty is also prohibited.

1. The presence of alcohol is indicated by a confirmed blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per 100 cubic centimeters of blood.

2.a Illegal or unauthorized drugs include:

i. any drug which is not legally obtainable;

ii. any drug which is legally obtainable, but has been illegally obtained;

iii. prescription drugs not being used in accordance with the prescription; or

iv. any substance which affects the employee's ability to safely and competently perform assigned duties.

b. Controlled dangerous substances are listed in schedule I, II, III, IV and V of R.S. 40:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:33 (January 2000).

### §107. Drug/Alcohol Testing

A. All employees may be required to submit to drug and/or alcohol testing as a condition of employment, as a condition of continued employment, or as a condition of promotion, demotion, reassignment or detail to a safety-sensitive position. Whether announced or unannounced, tests will be administered under the following circumstances.

1. Pre-Employment. Drug tests are required of all prospective employees and appointees of the LRC. Each prospective employee/appointee shall be required to submit to drug screening at the designated time and place following a job offer. Pursuant to R.S. 49:1008, a prospective employee/appointee testing positive for the presence of a prohibited substance shall be eliminated from consideration for employment/appointment. Additionally, applicants for safety-sensitive positions listed in §121 shall be required to submit to alcohol testing. Applicants who test positive for the presence of alcohol shall be eliminated from consideration for employment.

2. Post-Accident/Incident. An employee may be subject to drug testing following an on-duty accident where there is a reasonable suspicion that the employee was under the influence of drugs or alcohol. *Reasonable suspicion* is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent person to suspect that an

employee has engaged in drug or alcohol use. Only an appointing authority shall require an employee to submit to post-accident/incident testing. Generally, this decision will be based upon the recommendation of supervisory personnel at the scene who have objectively and thoroughly reviewed the circumstances of the accident/incident. The supervisor will fully document the facts upon which the recommendation for testing is made. Any employee directly involved in an on-duty accident shall be required to submit to drug and alcohol testing if:

a. the accident involves circumstances giving rise to a reasonable suspicion that the accident may have involved the employee's drug or alcohol use and the employee's action or inaction may have been a causative factor;

b. the accident meets the criteria of §107.A.2a and results in or causes the release of hazardous waste as defined by R.S. 30:2173(2) or hazardous materials as defined by R.S. 32:1502(5); or

c. the accident results in a fatality or serious bodily injury.

Note: When post-accident/incident testing is ordered, an LRC representative shall transport the individual being tested to and from the testing site. Under no circumstances should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

3. Random. Random alcohol and drug testing is required of all employees holding safety-sensitive positions as listed in §121. Such testing shall be periodic and unannounced, and employee selection therefor shall be by a computer-generated random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.

4. Promotion/Reassignment/Etc. to Safety-Sensitive Position. Current employees are required to undergo drug and alcohol testing prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position as defined in §121. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug or alcohol test result is reported, and employees are further subject to disciplinary action as specified in these rules.

5. Reasonable Suspicion. An employee shall be required to submit to drug and alcohol testing when he/she exhibits behavior or appearance that is characteristic of drug or alcohol use. The decision to test will be by an appointing authority based upon reliable, objective and articulable facts derived from direct observation of the employee's physical appearance, behavior, speech, body odor or physical manifestations. The observation must be made by supervisory personnel (two, if possible) who shall record, in writing, the observations leading to the recommendation for testing.

Note: When reasonable suspicion testing is ordered, an LRC representative shall transport the individual being tested to and from the testing site. Under no circumstances should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

6. Return-to-Duty/Rehabilitation Monitoring. Any employee who retains his/her job following a violation of these rules shall be required, at his/her own expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug/alcohol testing. Further, any employee who voluntarily or, as a condition of

continued employment, participates in an alcohol/substance abuse rehabilitation program, shall be subject to random drug/alcohol testing for a minimum of one year or longer as determined by the treating substance abuse professional. Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of returning to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:34 (January 2000).

#### **§109. Drug Testing Procedures**

A. Drug testing pursuant to this policy shall be for the presence of marijuana, opiates, cocaine, amphetamine/methamphetamine and phencyclidine (PCP) in accordance with R.S. 49:1001, et seq. Testing shall be performed by a contractor chosen by the Office of State Purchasing, Division of Administration. At a minimum, the testing procedure shall assure:

1. that all specimens for drug testing are collected, stored, transported and tested in compliance with United States Department of Health and Human Services (DHHS) guidelines (and applicable federal and state regulations) to ensure integrity of the testing process;

2. urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during collection of the urine specimen will be allowed only under the following conditions:

a. when there is specific, articulable reason to believe that the individual may alter or substitute the specimen;

b. when the individual has provided a urine specimen which falls outside the acceptable temperature range;

c. when the last urine specimen provided by the individual was verified by the medical review officer as adulterated; or

d. when collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process;

Note: In all instances in which direct observation is deemed appropriate, the designated LRC representative shall review and concur, in advance, with any decision by collection site personnel to obtain a specimen under direct observation. This representative shall maintain, in a confidential record, the full name of the reporting collection site personnel and the specific facts relied upon to approve the direct observation. The record shall be signed by the LRC representative. All direct observations shall be conducted by same gender collection site personnel.

3. the split sample collection methodology must be used in accordance with R.S. 49:1006(D), with both the primary and split specimens properly stored and transported to the testing laboratory. The primary urine sample will be analyzed for the presence of marijuana, opiates, amphetamines/methamphetamine, cocaine and phencyclidine (PCP);

4. appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition;

5. testing shall be performed by laboratories certified for forensic urine drug testing by the U.S. Department of

Health and Human Services and in strict compliance with DHHS Guidelines;

6. the dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry);

7. all positive test results (those which exceed federally established cut-off levels as set forth in 49 CFR 40, Section 40.29), shall first be reported by the testing laboratory to the LRC's qualified medical review officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or that medications, medical history or any other condition caused the positive test result;

8. if the test is confirmed to be positive by the MRO, the employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be tested in a different DHHS certified laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense;

9. once a positive test is confirmed and reported to the LRC by the MRO, an employee in a safety-sensitive position will be prohibited from performing safety-sensitive functions. A request for testing of the split sample will not delay any such employee's removal from performing safety-sensitive functions; and

10. if testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:35 (January 2000).

#### **§111. Alcohol Testing Procedures**

A. Evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration will be used by certified breath alcohol technicians to determine the presence of alcohol in the employee's system.

B. The employee will be advised of the results of the breath screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed within 20 minutes, but not less than 15 minutes of completion of the screening test. If the confirmatory test indicates a blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per 100 cubic centimeters of blood, the results will be reported as positive to the LRC's designated representative.

C. An employee occupying a safety-sensitive position will be immediately removed from performing safety-sensitive functions in the event of a positive alcohol test.

D. Positive test results will also be reported to the appointing authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing

form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Racing Commission, LR 26:35 (January 2000).

### **§113. Enforcement**

A. The use of illegal drugs, unauthorized alcohol and other controlled or unauthorized substances will not be tolerated. Substance abuse endangers the health and well-being of our employees, prevents quality service to the public and is inconsistent with the LRC's mission. While the LRC's position is firm, the LRC will resolve any reasonable doubt regarding the testing procedure or results in the employee's favor.

B. Disciplinary action will be taken after a complete and thorough review of the applicable data in accordance with Chapter 12 of the Civil Service Rules. Employees will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action.

C. **Penalty for a First Positive Test.** A first positive test (drug or alcohol) will result in disciplinary action up to and including the possibility of termination. Factors to be considered in determining the appropriate sanction include, but are not limited to, the employee's work history, length of service, current job performance and the existence of prior disciplinary action. At a minimum, the first-time offender will remain off from work at least 30 calendar days. For any such period, the first ten workdays will be a suspension, without pay. For the remaining 20 days, the employee will be permitted to use annual, sick or compensatory leave, if available. During this 30-day period, the employee shall obtain a substance abuse evaluation and commence any recommended rehabilitative treatment. Refusal to participate in the evaluation/treatment process, at the employee's expense, will result in termination.

D. Termination will be the recommended penalty for the following violations:

1. second positive drug test result or confirmed blood alcohol level above the applicable thresholds;
2. refusal to submit to a drug or alcohol test;
3. failure to cooperate in any way which prevents the completion of a drug or alcohol test;
4. submission of an adulterated or substitute sample for testing;
5. buying, selling, dispensing, distributing or possessing unauthorized alcohol or any illegal or unauthorized substance while on duty, in a state vehicle or on LRC/state premises; and
6. operating a state vehicle or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of these rules.

E. Suspension will be the recommended penalty for the following violations:

1. failure to notify a supervisor of an off-duty arrest or conviction of DWI or drug-related offense at the beginning of the next scheduled workday.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Racing Commission, LR 26:36 (January 2000).

### **§115. Confidentiality/Employee Rights**

A. All drug and alcohol testing results and records (including all information, interviews, reports and statements) are considered confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to written employee consent; federal agencies when licensure or certification actions are required; to a decision-maker in arbitration, litigation or administrative proceedings arising from a positive drug test; and as otherwise required by law.

B. In compliance with R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon written request, have the right of access, within seven working days, to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

C. Employees should know that statistical records and reports of drug testing are maintained by the LRC, contract physicians and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug testing program.

D. The LRC has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in these rules will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by this policy, discovered in/on LRC/state property, or upon the person of an LRC employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale, distribution or transfer of illegal drugs or controlled substances while on duty or on LRC/state property shall be referred to appropriate law enforcement authorities.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Racing Commission, LR 26:36 (January 2000).

### **§117. Employee Assistance Program**

A. Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from the LRC's Employee Assistance Program (EAP) coordinator within the Human Resources Division of the Department of Economic Development. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs.

B. Employees referred to the EAP coordinator by supervisory personnel or who, as a condition of continued employment, participate in a substance abuse rehabilitation program will be subject to the return-to-duty/rehabilitation monitoring testing set forth in these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:36 (January 2000).

### **§119. General Provisions**

A. The LRC reserves the right to have a licensed physician, of its own choosing and at its own expense, determine if use of prescription medication produces effects which impair the employee's performance or increase the risk of injury to the employee or others. In such case, the LRC will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave.

B. Although the substance abuse testing defined in these rules is restricted to five specified drugs and alcohol, the LRC reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:37 (January 2000).

### **§121. Safety-Sensitive Positions**

There are no safety sensitive positions in the LRC at this time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:37 (January 2000).

Charles A. Gardiner, III  
Executive Director

0001#061

## **RULE**

### **Department of Economic Development Real Estate Commission**

Real Estate (LAC 46:LXVII.Chapters 1-67)

Under the authority of the Louisiana Real Estate License Law, 37:1435 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950, et seq., notice is hereby given that the Real Estate Commission has repealed LAC 46:LXVII.Subpart 1.Real Estate, Chapters 1 through 67, in its entirety, and promulgated rules and regulations which will define and interpret the existing rules and regulations to a better extent. The rules have no known impact on family formation, stability, or autonomy.

## **Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS Part LXVII. Real Estate Subpart 1. Real Estate**

### **Chapter 1. Authority**

#### **§101. Adoption**

A. The rules and regulations of the Louisiana Real Estate Commission contained herein have been adopted pursuant to and in compliance with R.S. 37:1431 et seq., and any violation of these rules or regulations, or of any real estate licensing law, shall be sufficient cause for any disciplinary action permitted by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:37 (January 2000).

### **Chapter 3. Applications for Initial Licenses**

#### **§301. Application**

A. Every application must be fully completed, notarized and accompanied by the prescribed fees.

B. Every initial applicant for a salesperson license must provide an affidavit signed by the sponsoring broker at the time the application is submitted; or

1. The salesperson applicant may provide the affidavit signed by the sponsoring broker prior to issuance of the license.

2. Upon passing the licensing examination the applicant must, within ninety days, submit to the Commission a statement of sponsorship signed by a licensed real estate broker acknowledging that the broker will serve as the applicant's sponsoring broker. The Commission, at its discretion, may extend the ninety day period upon a showing that factors beyond the control of the applicant warrant such an extension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:37 (January 2000).

#### **§303. Broker and Salesperson License Applications**

A. Every applicant for licensing as an individual real estate broker or salesperson shall include with their application the following:

1. proof of completion of the required real estate educational hours from a real estate school holding a certificate of authority from the Commission or certificates or university transcripts indicating completion of courses which have been approved by the Commission. Effective January 1, 2000, only those prelicensing educational courses completed during the five year period immediately preceding the date of initial application for a real estate salesperson or broker license will be granted full credit by the Commission. Real estate prelicensing course work completed by an applicant prior to the five year period immediately preceding the date of initial application for a salesperson or broker license may be considered by the Commission for partial credit toward the initial prelicensing requirement. Any partial credit granted will be based on the

date(s) of course completion and the applicability of course content to current preclicensing requirements. The Commission may accept approved real estate course work obtained in other jurisdictions toward fulfillment of preclicensing salesperson and/or broker educational hours. Real estate course work obtained from nationally recognized institutes may also apply toward fulfillment of broker preclicensing hours. The applicant must apply for and receive approval of such course work from the Commission prior to submitting the initial licensing application. Every applicant for a Louisiana real estate license must complete an approved course of study consisting of at least thirty classroom hours of course work. Such course work shall include study of the Louisiana Real Estate License Law, Commission Rules and Regulations and Louisiana Civil Law relating to real estate and any other courses the Commission deems necessary and appropriate;

2. license verification history from each jurisdiction where the applicant has held or currently holds a real estate license as a broker or salesperson;

3. verification of passing an equivalent real estate licensing examination within the five year period immediately preceding the date of application if the applicant is requesting a waiver of the national portion of the licensing examination.

B. Every application for a corporation, partnership or limited liability broker license shall be submitted by the qualifying broker designated by the corporation, partnership or limited liability company on a fully completed, notarized application accompanied by the prescribed fees and the following documents:

1. copy of the resolution or other document executed by a principal of the corporation, partnership or limited liability company designating the individual real estate broker as its qualifying broker;

2. notarized Affidavit of the Qualifying Broker;

3. copy of the Registration Certificate issued by the Secretary of State;

4. copy of any registration issued by the Secretary of State for any trade name or trademark to be used by the corporation, partnership or limited liability company in its real estate business activities as a licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:37 (January 2000).

## **Chapter 5. Examinations**

### **§501. Examination Procedure**

A. Each applicant for a real estate license examination must submit an application to the Commission for a determination of eligibility to take the applicable licensing examination. The responsibility for timely submission of initial licensing applications rests solely with each individual applicant.

B. Upon a determination by the Commission that the applicant is eligible to take the licensing examination, an examination authorization will be issued to the applicant. The authorization will be valid for one examination which must be completed within a period of ninety days of issuance. If the applicant does not take the examination within the ninety day period, the applicant must apply to the Commission and receive a new examination authorization

prior to scheduling an appointment to take the licensing examination.

C. Upon receipt of the examination authorization from the Commission, the applicant is solely responsible for contacting the Commission's designated national testing service to arrange for an appointment to take the examination.

D. Each examination applicant must comply with all examination procedures established by the Commission and its designated national testing service. These procedures will be contained in a licensing information bulletin provided to each applicant with the initial licensing application packet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000).

### **§503. Disqualification of Applicants**

A. Any action by an applicant to use, or attempt to use, to obtain, or attempt to obtain, to supply to others, or attempt to supply to others, specific information on copyrighted test questions appearing on any qualifying examination administered under the jurisdiction of the Commission shall be grounds for denial of a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000).

### **§505. Prohibited Activities**

A. Licensees, certificate holders, registrants, and persons employed by or associated with a licensee, certificate holder, registrant, school owner or school director, shall not obtain or attempt to obtain by deceptive or fraudulent means any copyrighted test questions and/or confidential test material used by or belonging to any national testing service under current or expired contract with the Commission for administration of its licensing and certification examinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000).

### **§507. Failure of Examination**

A. Any applicant who takes and fails to pass the initial examination may apply to retake the examination by submitting to the Commission a copy of the fail notice and a new examination processing fee within ninety days of the date of failure. Failure to reapply for an examination within the ninety day period will result in closure of the applicant's file and forfeiture of all fees. Thereafter, the applicant will be required to submit a new application and remit all prescribed fees to be eligible for the licensing examination. The Commission, at its discretion, may extend the ninety day retake period upon a showing that factors beyond the control of the applicant warrant such an extension.

B. The failing applicant may continue to retake the examination for a period of one year from the initial examination date, provided the applicant follows the retake procedures as specified in Section 507 of this Chapter. Failure of the applicant to achieve a passing score on both the national and state portions of the licensing examination within the one year period will result in the loss of

examination eligibility. The applicant will not be eligible to again apply for the licensing examination until six months after the date of the loss of examination eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000).

#### **§509. Partial Failure of Examination**

A. Any applicant who takes an examination and passes only the national or state portion of the examination shall be required to retake only the failed portion. The applicant's passing score on the passed portion of the examination will be valid for a period of one year from the date of passage. The applicant may apply to retake the failed portion by submitting to the Commission a copy of the fail notice and a new examination processing fee within ninety days from the date of failure. Failure to reapply for an examination within the ninety day period will result in closure of the applicant's file and forfeiture of all fees. Thereafter, the applicant will be required to submit a new application and remit all prescribed fees to be eligible for the licensing examination. The Commission, at its discretion, may extend the ninety day retake period upon a showing that factors beyond the control of the applicant warrant such an extension.

B. Failure of the applicant to achieve a passing result on both portions of the examination within a one year period of the initial examination date will result in the loss of examination eligibility. The applicant will not be eligible to again apply for the licensing examination until six months after the date of the loss of examination eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000).

#### **§511. Examination Requirement for Out-of-State Applicants**

A. Any applicant for a Louisiana real estate license who was previously or is currently licensed in another jurisdiction as a real estate salesperson or broker shall be required to take and pass only the state portion of the examination, upon a showing by the applicant that the applicant has passed, within five years of applying for licensing in Louisiana, an equivalent examination in another jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000).

### **Chapter 7. Fees**

#### **§701. Refund of Fees**

A. Except as otherwise provided in these rules and regulations all fees submitted to the Commission are nonrefundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000).

#### **§703. Duration of Fees for Licenses, Certificates and Registrations**

A. Fees shall cover a period of one calendar year and shall not be prorated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000).

#### **§705. Returned Checks**

A. Payment of any fee with a check which is returned by a financial institution wherein the reason for not paying the check is not a fault of the financial institution shall be grounds for cancellation of the transaction for which the fee was submitted and/or the suspension or revocation of a license, registration or certificate.

B. Persons issuing checks to the Commission which are returned by financial institutions for any reason will be notified of the return of the check by certified mail to the address registered by that person with the Commission. Within 10 days from the mailing of the notification, the person issuing the check will remit a certified check, cashier's check or money order payable to the Louisiana Real Estate Commission in the amount of the returned check plus a \$25.00 processing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000).

### **Chapter 9. Renewal Applications**

#### **§901. Timely Renewal of Licenses, Registrations and Certificates**

A. The responsibility for the timely submission of renewal applications and the payment of the required fees rests solely with each individual licensee, registrant and certificate holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000).

#### **§903. Non-Renewal of Real Estate Licenses**

A. No real estate license shall be issued to any associate broker or salesperson until the individual real estate broker license of their sponsoring broker, or, if sponsored by a designated qualifying broker, the corporate, partnership, or limited liability company broker license of their sponsoring designated qualifying broker has been renewed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000).

#### **§905. Renewal Application**

A. A salesperson or associate broker renewal application must be signed by a sponsoring broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000).

## **§907. Continuing Education Required for Renewal**

A. The active license of an individual real estate broker or salesperson shall not be renewed unless the broker or salesperson has completed eight hours of approved continuing education course work during the immediately preceding license period. Course work submitted by delinquent renewal applicants may either be obtained in the preceding license period or prior to submission of the delinquent renewal application to the Commission.

B. Beginning January 1, 2001, except for purposes of compliance with the Americans with Disabilities Act (ADA) or other similar extenuating circumstances determined by the Commission, correspondence study courses shall not be accepted toward fulfillment of the four hours in mandatory continuing education subjects specified by the Commission unless said courses are certified by the Association of Real Estate License Law Officials (ARELLO) for distance learning purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000).

## **Chapter 11. Delinquent Renewal**

### **§1101. Application for Delinquent Renewal**

A. Applications for delinquent renewal of broker or salesperson licenses and applications for delinquent renewal of timeshare sales registrations shall be accepted by the Commission only during the six-month period immediately following the last December 31 date on which the applicant held a valid license or registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000).

### **§1103. Loss of Renewal Eligibility**

A. Licensees and timeshare sales registrants who fail to renew a real estate license or timeshare sales registration during the six-month delinquent period following the expiration of a license or registration shall apply as and meet all requirements of initial applicants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000).

## **Chapter 13. Broker Affiliation**

### **§1301. Associate Broker**

A. A licensed individual real estate broker may become exclusively affiliated as an associate broker with a sponsoring broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000).

### **§1303. Notification by Broker Applicants**

A. Any applicant for licensing as an individual real estate broker who elects, if and when licensed, to become exclusively affiliated with a sponsoring broker shall notify the Commission in writing of the name of the sponsoring broker prior to the issuance of the license. When the applicant is qualified for licensing as a broker, the

Commission shall inscribe the name of the sponsoring broker on the license and issue the license to the sponsoring broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000).

### **§1305. Notification by Individual Real Estate Broker**

A. Any individual real estate broker who elects to become exclusively affiliated with a sponsoring broker shall notify the Commission in writing prior to beginning such a relationship and provide the name of the sponsoring broker and the effective date of the relationship. The notification shall be accompanied by the broker's license and the transfer fee. The Commission shall inscribe the name of the sponsoring broker on the license and issue the license to the sponsoring broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000).

### **§1307. Escrow Accounts Prohibited**

A. Any broker who is exclusively affiliated with a sponsoring broker is prohibited from maintaining a sales escrow checking account, rental trust checking account or security deposit trust checking account except as authorized in Chapter 27. All funds received by the associate broker in real estate transactions of any nature will be placed in the custody of the sponsoring broker.

B. Associate brokers who were licensed as individual real estate brokers and who maintained sales escrow checking accounts, rental trust checking accounts or security deposit trust checking accounts prior to affiliating with a sponsoring broker may continue to maintain those accounts for the limited and specific purpose of completing pending transactions, as authorized by Chapter 27.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000).

## **Chapter 15. Transfers and Terminations**

### **§1501. Transfers**

A. The transfer of the real estate license of a salesperson or an associate broker in the active status, or the termination of sponsorship of a salesperson or associate broker, will be accomplished by completing a transfer form prescribed by the Commission and paying any required fees.

B. The sponsoring broker shall return the license of the salesperson or associate broker to the Commission within five days of the date of execution of the transfer form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000).

### **§1503. Exemption from Transfer Fee**

A. No transfer fee or delinquent renewal fee shall be charged to an associate broker or salesperson who applies for transfer or change of status within sixty days of any of the following circumstances:

1. when the sponsoring broker has died;

2. when the sponsoring broker has failed to renew his license;
3. when the sponsoring broker's license has been suspended or revoked;
4. when the sponsoring broker's license is transferred to the inactive status;
5. when the sponsoring broker elects to discontinue the sponsorship of a licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000).

**§1505. Transfers on Acquisition or Purchase of Licensed Agencies**

A. When a licensed agency is purchased or otherwise acquired by another licensed agency, the sponsoring or qualifying broker of the acquiring agency will notify the Commission in writing not later than the second working day following the date of acquisition.

B. The notification to the Commission will specify the date of acquisition and request the transfer of all licensees sponsored by the agency being acquired to the acquiring agency and shall certify continuous errors and omissions insurance coverage of all licensees being transferred to the acquiring agency. If the transfer of licensees necessitates the payment of fees to the Commission for coverage under the Commission group policy, a listing of all licensees to be covered under the policy and a check in payment of the required fees will accompany the notification

C. On receipt of the written notification the licenses of all associate brokers and salespersons will be transferred by the Commission to the acquiring agency under the sponsorship of the sponsoring or qualifying broker of the acquiring agency, with the effective date of transfer being the date of acquisition as specified in the written notice of acquisition.

D. The sponsoring or qualifying broker of the acquiring agency shall, within two working days following the date of acquisition, give written notice to all licensees transferred to the acquiring agency in connection with the acquisition.

E. Associate brokers or salespersons who do not elect to remain with the acquiring agency shall within five days after notification advise the sponsoring or qualifying broker of the acquiring agency and request the return of their licenses to the Commission. Transfers to a new sponsoring broker will be accomplished in accordance with the provisions of this Chapter.

F. The transfer of the licenses of associate brokers or salespersons who will be terminated by the sponsoring or qualifying broker of the acquiring agency will be accomplished in accordance with the provisions of this Chapter.

G. Not later than fifteen days following the date of acquisition, the sponsoring or qualifying broker of the acquiring agency will advise the Commission in writing of the status of all licensees formerly sponsored by the acquired agency.

1. The notification will include a listing by category which identifies:
  - a. each associate broker or salesperson who requested the return of their license to the Commission;

- b. each associate broker or salesperson who is being terminated by the acquiring agency; and
- c. each associate broker or salesperson who has elected to remain with the acquiring agency.

2. The notification will include:

- a. the licenses of each associate broker or salesperson who will not remain with the acquiring agency;
- b. copies of the written notification to and/or from each associate broker and salesperson as required by this Chapter;
- c. a check from the acquiring agency in payment of the appropriate transfer fee for each licensee who was sponsored by the agency being acquired and who will remain with the acquiring agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000).

**§1507. Change of Licensing Status**

A. Individual real estate brokers and salespersons may transfer from active to inactive status or from inactive to active status by completing a transfer form prescribed by the Commission, satisfying the requirements set forth in the Louisiana Real Estate License Law and Rules and Regulations of the Commission, and paying any required fees.

B. Corporate, partnership and limited liability company real estate broker's licenses shall remain in the active license status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000).

**Chapter 17. Termination Responsibilities**

**§1701. Relinquishment of Business Related Property**

A. Upon termination of a licensee's relationship with a sponsoring broker, every salesperson or associate broker shall immediately turn over to the sponsoring broker all business related property obtained from or provided by the sponsoring broker or agency, to include keys to any and all properties listed with the broker whether such keys were provided by the broker or obtained by the licensee during the business relationship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000).

**§1703. Relinquishment of Business Related Data**

A. Upon termination of a business relationship with a sponsoring broker, salesperson or associate broker shall immediately turn every over to the sponsoring broker all listing information, contracts, agency forms, and other business or agency related information, data, or documents obtained from or provided by the sponsoring broker or agency for use by the licensee during the business relationship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000).

### **§1705. Personal Obligations**

A. The responsibility for settlement of matters pertaining to financial obligations resulting from the business relationship, including the payment of commissions and dues to professional organizations, rests solely with the parties to the relationship. Any disputes resulting therefrom should be properly addressed through civil litigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000).

### **§1707. Report of Alleged Failure**

A. Any sponsoring broker who alleges failure to comply with §1701 or §1703 of this Chapter by a formerly sponsored salesperson or associate broker shall submit a signed and documented report of such failure at the time the license is returned to the Commission, and provide a copy of the report to the former licensee. The report shall specifically list and identify the business related property or data not relinquished by the formerly sponsored licensee and the signed report shall constitute a written complaint filed with the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000).

## **Chapter 19. Names on Licenses, Registrations, and Certificates; Trade Names; Symbols; and Trademarks**

### **§1901. Names on Licenses, Registrations and Certificates**

A. All licenses, registrations and certificates issued by the Louisiana Real Estate Commission will be issued in the name of the legal entity of the applicant.

1. Licenses, registrations and certificates issued to individual real estate brokers, real estate salespersons, timeshare registrants, and real estate school instructors will be issued in the name of the individual person.

2. Licenses, registrations and certificates issued to any corporation, partnership or limited liability company for any purpose will be issued in the identical name of the corporation, partnership or limited liability company as registered with the Secretary of State. No license, registration or certificate will be issued to any corporation, partnership, or limited liability company not registered with the Secretary of State.

3. The name of any broker or salesperson whose real estate license has been revoked by the Commission, with the revocation becoming final and effective on or after February 1, 1995, which in any way represents that the former broker or salesperson is licensed by the Commission to conduct real estate activities requiring licensing in Louisiana, shall not be utilized on any license issued by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000).

### **§1903. Trade Names**

A. Licenses, registrations and certificates issued by the Commission will not indicate a trade name of the licensee, registrant or certificate holder unless the trade name is

registered with the Secretary of State and a copy of the registration is on file at the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000).

### **§1905. Symbols and Trademarks**

A. Licensees, registrants and certificate holders are prohibited from using any symbol or trademark in connection with any license, registration or certificate issued by the Commission without first registering the symbol or trademark with the Secretary of State and placing a copy of the registration on file at the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000).

## **Chapter 21. Concurrent Licensing**

### **§2101. Broker and Salesperson Licenses**

A. A broker may conduct real estate activity as an individual real estate broker and concurrently be designated as the qualifying broker of one or more corporations, limited liability companies and/or partnerships.

B. Associate brokers and salespersons shall not be sponsored by more than one sponsoring broker.

C. Licenses as brokers or salespersons, or a registration as a timeshare interest salesperson shall not be issued to or held concurrently by any person. Brokers may not concurrently conduct real estate activities as an individual real estate broker and as an associate broker exclusively affiliated with another real estate broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000).

## **Chapter 23. Branch Offices**

### **§2301. Branch Office**

A. An office located at other than the registered address of a sponsoring or qualifying broker which has been established by the broker or a licensee sponsored by the broker for conducting any real estate activity requiring licensing as a broker or salesperson and which in any way advertises the name of the broker or broker's company or the telephone number of the licensed broker shall be considered to be a branch office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000).

## **Chapter 25. Advertising**

### **§2501. Advertisements**

A. Any advertisement involving the sale, lease or management of real estate by any licensee shall include the name and telephone number of the licensed real estate broker, and may include the name and telephone number of a salesperson or associate broker sponsored by the broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000).

### **§2503. Owner Authorization**

A. No broker or licensee sponsored by said broker shall in any way advertise property belonging to other persons as being for sale or rent or place a sign on any such property offering the property for sale or rent without first obtaining the written authorization to do so by all owners of the property or their authorized attorney in fact.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000).

### **§2505. Accuracy in Advertising**

A. All advertising shall be an accurate representation of the property advertised. No broker or licensee sponsored by said broker shall use advertising which is misleading or inaccurate or in any way misrepresents any property, terms, value, policies, or services of the business conducted. The advertising shall not include any name or trade name of any franchiser or real estate organization or association of which the licensee is not a member or franchisee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000).

### **§2507. Advertisements of Residential Property**

A. All printed advertisements for the sale or lease of residential real estate shall indicate the month and year the advertisement is printed, published, or distributed. Advertisements printed or published in newspapers, real estate trade publications and commercial magazines and brochures bearing an issue or publication date will be considered in compliance with this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000).

### **§2509. Advertisements by Franchise Organizations**

A. Any licensed broker or salesperson affiliated with a franchise organization must disclose to the public that the real estate brokerage firm is independently owned and operated in all advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000).

### **§2511. Agent Owner-Licensed Agent**

A. A licensed broker or salesperson who offers property in which he or she owns any interest as being for sale or rent shall state in any advertising, and on any sign placed on the property, that he or she is a licensed real estate agent.

B. Any licensed broker or salesperson who advertises, or offers to purchase or rent property for his or her own full or partial interest shall state in any advertisement that he or she is a licensed real estate agent.

C. Including the term "licensed real estate agent" in any advertisement or on any sign shall be sufficient to satisfy this requirement.

D. This Section is not applicable to the sale, rental, or acquisition of property by licensees under a contractual agreement with a licensed Louisiana real estate broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000).

### **§2513. Appraisals**

A. No licensee shall offer or advertise any appraisal service to the public in any manner which would create the impression of the licensee being a state certified real estate appraiser unless the licensee has been certified as such in accordance with R.S. 37:3406. Licensees who have not been certified as state certified real estate appraisers shall not describe or refer to any appraisal or other evaluation of real estate located in this state by the term "state certified."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000).

### **§2515. Internet Advertising**

A. A real estate broker advertising or marketing on a site on the Internet must include the following data on each page of the site on which the advertisement appears:

1. the broker's name as registered with the Commission;
2. the city, state and country in which the broker's main office is located;
3. the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

B. A real estate broker using any Internet electronic communication for advertising or marketing, including but not limited to, e-mail, e-mail discussion groups, and bulletin boards, must include the following data on the first or last page of all communications:

1. the broker's name as registered with the Commission;
2. the city, state and country in which the broker's main office is located;
3. the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

C. An associate broker or salesperson advertising or marketing on a site on the Internet must include the following data on each page of the site on which the licensee's advertisement or information appears:

1. the associate broker's or salesperson's name;
2. the name of the licensee's sponsoring broker as the name is registered with the Commission;
3. the city, state and country in which the sponsoring broker's main office is located;
4. the regulatory jurisdiction(s) in which the associate broker or salesperson holds a real estate license.

D. An associate broker or salesperson using any Internet electronic communication for advertising or marketing, including but not limited to e-mail, e-mail discussion groups, and bulletin boards, must include the following data on the first or last page of all communications:

1. the associate broker's or salesperson's name;
2. the name of the licensee's sponsoring broker as the name is registered with the Commission;
3. the city, state and country in which the sponsoring broker's main office is located;
4. the regulatory jurisdiction(s) in which the associate broker or salesperson holds a real estate license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000).

## **Chapter 27. Escrow and Trust Accounts**

### **§2701. Sales Escrow Checking Account**

A. Each resident broker who accepts any monies on behalf of a client in connection with the sale of real estate shall open and maintain a sales escrow checking account in a financial institution in the state of Louisiana. All sales escrow accounts shall be titled in the identical wording as stated on the broker's license and the wording "Sales Escrow Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all monies received by a broker in connection with the sale of real estate shall be deposited in this account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000).

### **§2703. Rental Trust Checking Account**

A. Each resident broker engaged in the collection of rental payments on behalf of clients shall open and maintain a rental trust checking account in a financial institution in the state of Louisiana. All rental trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Rental Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all monies collected as rental payments from or on behalf of clients shall be deposited into this account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000).

### **§2705. Security Deposit Trust Checking Account**

A. Each resident broker engaged in the collection of rental security or damage deposits in connection with property management activities on behalf of clients shall open a security deposit trust checking account in a financial institution in the state of Louisiana. All security deposit trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Security Deposit Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all monies collected as rental security deposits from or on behalf of clients shall be deposited into this account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000).

### **§2707. Account Affidavit**

A. When requested to do so by Commission personnel, a broker shall execute and submit to the Commission an affidavit attesting to the existence, location and account number of a sales escrow checking account, rental trust checking account, or security deposit trust checking account, and authorizing and empowering the Commission or its

representatives to examine, inspect, and/or copy the records of the account. All such affidavits shall be submitted to and received by the Commission within five days following such a request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000).

### **§2709. Non-Resident Brokers**

A. Each non-resident broker shall open and maintain sales escrow checking accounts, rental trust checking accounts and security deposit trust checking accounts as specified for resident brokers. The accounts may be opened and maintained at a financial institution in the state of Louisiana or in a financial institution in the state in which they reside.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000).

### **§2711. Branch Office Accounts**

A. A broker may open additional sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts to accommodate business transacted out of the branch offices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000).

### **§2713. Signatory Rights on Checking Accounts**

A. An individual real estate broker who maintains a sales escrow checking account, a rental trust checking account or a security trust checking account shall be an authorized signatory on each account maintained and the individual real estate broker shall be responsible for the proper maintenance and disbursement of the funds in the accounts. Granting authority to sponsored licensees and/or employees of the broker to sign checks on the accounts does not relieve the individual real estate broker of this responsibility.

B. The qualifying broker of a licensed corporation, partnership or limited liability company shall be an authorized signatory on sales escrow checking accounts, rental trust checking accounts and security deposit trust checking accounts maintained by the licensed entity and the qualifying broker shall be responsible for the proper maintenance and disbursement of the funds in the accounts. Granting authority to sponsored licensees, principals and/or employees of the licensed entity does not relieve the qualifying broker of this responsibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000).

### **§2715. Additional Accounts**

A. Where the interest of the principal parties to a particular transaction or series of transactions would be served thereby, and with the prior written consent of the principal parties, a broker may open an additional sales escrow checking account, rental trust checking account or security deposit trust checking account in any financial

institution in the state of Louisiana or the state in which a non-resident broker resides and deposit therein all monies received in trust on behalf of those parties pursuant to that particular transaction or series of transactions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000).

#### **§2717. Non-Interest Bearing Checking Accounts**

A. Every sales escrow checking account, rental trust checking account or security deposit trust checking account shall be opened as a non-interest bearing checking account unless all parties having an interest in the funds to be deposited therein have agreed otherwise in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000).

#### **§2719. Personal Funds in Escrow and Trust Checking Accounts**

A. A sum not to exceed \$2500.00 may be kept in each sales escrow checking account, rental trust checking account, and security deposit trust checking account, which sum shall be specifically identified and deposited to cover bank service charges relating to the accounts.

B. A broker may, in connection with property management activities, keep funds in excess of \$2500.00 in a rental trust checking account for the temporary, limited and specific purpose of enabling the broker to satisfy financial obligations for or on behalf of clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000).

#### **§2721. Withdrawal**

A. No monies received and deposited into a sales escrow checking account, rental trust checking account, or security deposit trust checking account shall be withdrawn for any purposes except:

1. upon mutual written consent of all parties having an interest in the funds;
2. upon Commission order;
3. upon court order;
4. for the purpose of depositing monies into the registry of the court in a concursus proceeding;
5. for the purposes of depositing the funds with the Commission pursuant to Chapter 29;
6. to disburse funds from a sales escrow checking account to the appropriate party upon a reasonable interpretation of a contract for the sale of real estate;
7. for the purpose of returning the funds to a buyer at the time of closing;
8. to cover the payment of service charges on sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts with such payment being made from funds deposited into the accounts by the broker;
9. upon approval by the Commission in connection with the sale or acquisition of a licensed entity; and

10. to comply with the provisions of R.S. 9:3251 or any other state or federal statute governing the transfer of rents, security deposits or other escrow funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000).

#### **§2723. Deposits**

A. Any money received in connection with a real estate transaction involving the sale, lease or management of real estate shall be deposited into the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000).

#### **§2725. Account Closing**

A. No sales escrow checking account, rental trust checking account, or security deposit trust checking account may be closed until such time as all deposits therein have been properly disbursed according to law. Every broker shall notify the Commission in writing of the closing of any sales escrow checking account, rental trust account checking or security deposit trust checking account within ten days following the date the account is closed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000).

#### **§2727. Maintaining Accounts**

A. Upon revocation, suspension or lapse of his license for any reason, or upon bankruptcy, a broker shall continue and maintain his sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts until such time as all deposits therein have been properly disbursed according to law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000).

#### **§2729. Corporations, Partnerships and Limited Liability Companies**

A. Every licensed corporation, partnership and limited liability company shall open and maintain sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts as specified for resident and non-resident brokers. All funds received from or on behalf of clients in any real estate transaction conducted by the corporation, partnership, or limited liability company as a licensee shall be deposited into these accounts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000).

**§2731. Transfer of Trust Funds on Sale or Acquisition of Agency**

A. When a licensed agency is sold or otherwise acquired by another licensed agency the sponsoring or qualifying broker of the acquiring agency will advise the Commission in writing of the name of the agency acquired and the anticipated date of the transfer of trust funds. The letter notifying the Commission of the acquisition will specify the account numbers of the sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts from which the funds will be transferred and the account numbers of the accounts into which the funds will be deposited.

B. A letter jointly signed by the sponsoring or qualifying brokers of the agency being acquired and the acquiring agency requesting that approval be granted for the transfer of funds will accompany the notification to the Commission.

C. The transfer of funds shall not be accomplished until written approval has been granted by the Commission in accordance with §2721.A.9 of this Chapter.

D. Within five working days following the transfer of funds a letter jointly signed by the sponsoring or qualifying brokers of the agency being acquired and the acquiring agency will be forwarded to the Commission certifying that all trust funds have been transferred. The letter will include the following:

1. a certification that all sales escrow checking account, rental trust checking account, and security deposit trust checking account funds have been transferred to and received by the acquiring agency;
2. a certification that supporting documents for all trust funds have been delivered to and received by the acquiring agency;
3. a listing of all sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts from which a transfer was made and the amount of funds transferred from each account;
4. a listing of all sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts into which funds were deposited and the amount of funds deposited into each account.

E. The sponsoring or qualifying broker of the agency being acquired will close the escrow accounts and trust accounts from which the funds were transferred within ten days following the transfer of funds and advise the Commission in writing when such action has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:46 (January 2000).

**§2733. Change of Licensing Status**

A. An individual real estate broker who elects to become exclusively affiliated with a sponsoring broker, and an active broker transferring to an inactive status, shall continue to maintain their sales escrow checking accounts, rental trust checking accounts and security deposit trust checking accounts until such time as all deposits therein have been properly disbursed according to law. As of the effective date of relationship with a sponsoring broker, or transfer to inactive status, no further trust funds shall be placed in the accounts. The transferring broker shall advise the

Commission in writing within five working days of the effective date of the transfer to the new status of the amount of funds in each escrow or trust account maintained, and the approximate date each account will be closed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:46 (January 2000).

**Chapter 29. Disbursement of Escrow Deposits**

**§2901. Escrow Disputes**

A. When a broker determines or has knowledge that a dispute exists as to the ownership or entitlement of a deposit or funds held in a sales escrow checking account, as a result of a real estate sales transaction, it shall be the obligation of the broker holding the funds to immediately notify in writing all of the parties and licensees involved of the dispute, and within 90 days of the scheduled closing date, or determination or knowledge that such a dispute exists, whichever shall first occur, to do one of the following:

1. disburse the funds upon the written and mutual consent of all of the parties involved;
2. disburse the funds upon a reasonable interpretation of the contract which authorizes the broker to hold such funds. Disbursement may not occur until 10 days after the broker has notified, in writing, all parties and licensees;
3. through a concursus proceeding, deposit the funds into the registry of any court of competent jurisdiction and proper venue;
4. deposit the funds including original promissory notes, with the Louisiana Real Estate Commission along with a request for an escrow disbursement order. This request shall include the names and last known addresses of the principals to the agreement, a copy of the purchase agreement, all forms required by the Commission, and copies of any other documents which may have some bearing on the dispute. Note: In the event that the dispute is to be heard by the Commission, it will require that the agents and/or brokers appear before the Commission at its regularly scheduled meeting at which the dispute will be heard;
5. disburse the funds upon the order of a court of competent jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:46 (January 2000).

**§2903. Escrow Disbursement Order**

A. The Louisiana Real Estate Commission upon receipt of a request for an escrow disbursement order:

1. shall immediately cause the funds accompanying said request to be deposited in an interest bearing escrow checking account pending final disposition;
2. may commence an investigation by its staff of the dispute;
3. may, upon completion of an investigation, consider the investigative findings and at a regular or special meeting issue an escrow disbursement order providing for the disposition and allocation of funds which are being held in escrow and are in dispute;
4. may call an adjudicatory hearing before issuing an escrow disbursement order; or

5. may deposit the disputed funds into a concursus proceeding in any court of competent jurisdiction and proper venue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:46 (January 2000).

### **Chapter 31. Reporting of Changes of Address or Telephone Number by Licensees, Registrants and Certificate Holders**

#### **§3101. Reporting**

A. Every licensee, certificate holder and timeshare registrant shall report any changes in the business or residence address or telephone number to the Commission in writing within ten days of the change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000).

#### **§3103. Changes in Data Provided by Corporations, Partnerships and Limited Liability Companies**

A. Corporations, partnerships and limited liability companies licensed as real estate brokers shall file all reports required by any agency of this state when due and shall notify the Commission at the time of the filing of the reports of any information in the reports which would constitute a change in the information filed with the Commission by the licensed broker prior to the submission of the required reports.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000).

### **Chapter 33. Compensation**

#### **§3301. Full Knowledge**

A. Licensees shall not accept compensation from more than one party without the written acknowledgment of all parties to the transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000).

### **Chapter 35. Disclosure by Licensee**

#### **§3501. Licensee as Principal in a Real Estate Transaction**

A. A licensee acting as a principal in a real estate transaction, whether individually or through any entity in which he or she has an interest, shall disclose his or her status as a licensed real estate agent to all other principals in the real estate transaction, in writing, prior to entering into any real estate contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000).

### **Chapter 37. Agency Disclosure**

#### **§3701. Agency Relationships in Real Estate Transactions**

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000).

#### **§3703. Agency Disclosure Informational Pamphlet**

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

B. The agency disclosure informational pamphlet may be obtained from the Commission in a form suitable for use by licensees in reproducing the pamphlet locally. Licensees are responsible for ensuring that the pamphlets are the most current version prescribed by the Commission and that reproductions of the pamphlet contain the identical language prescribed by the Commission.

C. Licensees will provide the agency disclosure informational pamphlet to prospective sellers/lessors and buyers/lessees at the time of the first face-to-face contact with the sellers/lessors or buyers/lessees when performing any real estate related activity involving the sale or lease of real property, other than a ministerial act as defined in LSA-R.S. 9:3891(12).

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

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000).

#### **§3705. Dual Agency Disclosure**

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

B. The dual agency disclosure form shall be obtained from the Commission in a form suitable for use by licensees in reproducing the form locally. Licensees are responsible for ensuring that the form is the most current version

prescribed by the Commission and that reproductions of the form contain the identical language prescribed by the Commission.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000).

### **Chapter 39. Presentation of Offers and Counter Offers**

#### **§3901. Timely Presentation of Offers and Counter Offers**

A. All written offers and counter offers for the purchase of real estate shall be presented to all buyers and/or sellers for their consideration and decision immediately, without delay.

B. The licensee who prepares an offer or counter offer in a real estate transaction shall ensure that the time of day and date the offer or counter offer was signed by the offering party are included in the document.

C. The licensee who presents an offer or counter offer in a real estate transaction shall ensure that the time of day and date the offer or counter offer was accepted, rejected or countered are included in the document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000).

#### **§3903. Negotiations in Exclusive Agency Contracts**

A. Negotiations concerning property listed exclusively with a broker shall be carried on with the listing broker or agent designated by the listing broker, not the owner, except with the expressed consent of the listing broker.

B. Negotiations with a buyer who has entered into an exclusive buyer agent contract with a licensed broker shall be carried on with the licensed broker, or agent designated by the licensed broker, not the buyer, except with the express consent of the licensed broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000).

#### **§3905. Cooperative Transactions**

A. Licensees receiving written offers or counter offers in cooperative transactions shall annotate the offers or counter offers to indicate the time of day and date the offers or counter offers were received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000).

#### **§3907. Rejection of Offers and Counter Offers**

A. All written offers and counter offers presented to a seller and/or buyer and not accepted shall be clearly marked as rejected and signed by the seller and/or buyer. In any circumstance in which a seller and/or buyer refuses to sign a

rejected offer or counter offer, the licensee making the presentation of the offer or counter offer shall annotate this fact indicating the time of day and date of the rejection of the offer or counter offer by the seller and/or buyer. A copy of the rejected offer or counter offer signed by the seller and/or buyer, or a copy of the rejected offer or counter offer bearing the annotation of the licensee, shall be provided to the buyer and/or seller, and the rejected offer or counter offer shall be returned to the prospective buyer and/or seller within five days after the signature or annotation is affixed to the document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000).

#### **§3909. Broker's Authority to Reject Offers or Counter Offers**

A. In the event the owner (seller) is not available and grants authority to the listing broker to reject an offer or counter offer, the listing broker or a licensee designated by the listing broker shall mark the offer or counter offer as rejected and sign the offer or counter offer as such in lieu of the owner (seller), but the listing broker or licensee designated by the listing broker shall nevertheless forward a copy of the rejected written offer or counter offer to the owner (seller) for his signature acknowledging the rejection of the offer or counter offer. The copy of the rejected offer or counter offer signed by the owner (seller) shall be retained in the files of the listing broker. In the case of a cooperative transaction, the cooperating listing broker shall provide a copy of the rejected offer or counter offer bearing the signature of the owner to the cooperating selling broker within five days after the signed rejection is received from the owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000).

### **Chapter 41. Investigations and Hearings**

#### **§4101. Complaints**

A. Complaints alleging violations of the Louisiana Real Estate License Law and/or Rules and Regulations of the Commission shall bear the signature of the complainant or that of his or her legal representative before any action will be taken thereon by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000).

#### **§4103. Addition of Respondents to Investigations**

A. If during the conduct of an investigation documented probable cause is established indicating that violations of the Louisiana Real Estate License Law and/or Rules and Regulations of the Commission have been committed by licensees, timeshare registrants, or certificate holders other than the licensee, timeshare registrant, or certificate holder against whom the original complaint was made, the additional licensees or timeshare registrants may be added as respondents to the investigation in the absence of any written complaint alleging such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000).

#### **§4105. Executive Director May Authorize Investigation**

A. Upon documented probable cause, the executive director of the Louisiana Real Estate Commission may issue written authorization to investigate apparent violations of the Louisiana Real Estate License Law and/or the Rules and Regulations of the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:49 (January 2000).

#### **§4107. Adjudicatory Proceedings**

A. When, as a result of an investigation, it appears that violations of the Louisiana Real Estate License Law may have been committed by a licensee, registrant or certificate holder, the violations may be adjudicated through informal or formal adjudicatory proceedings.

##### **1. Informal Adjudicatory Proceedings**

a. The complaint may be concluded informally without a hearing by the Commission on the recommendation of the hearing examiner and the concurrence of the executive director.

b. A preliminary notice of adjudication will be issued to advise the respondent of the violation or violations alleged and to advise the respondent that the matter can be resolved informally should the respondent desire to admit to committing the act or acts specified and submits a written request that the matter be resolved informally.

c. A hearing officer will be appointed by the executive director to conduct an informal hearing with the respondent.

d. The informal hearing will be attended by the case investigator, or in the absence of the case investigator, the chief real estate examiner, who will respond to questions concerning the investigation which resulted in the allegations, and the hearing examiner, who will inform the hearing officer of the administrative, jurisdictional, and other matters relevant to the proceedings. No evidence will be presented, no witnesses will be called and no formal transcript of the proceedings will be prepared by the Commission. Statements made during the informal proceedings may not be introduced at any subsequent formal adjudicatory proceedings without the written consent of all parties to the informal hearing.

e. Following an admission by the respondent at the informal hearing that violations were committed as alleged, the hearing officer may enter into a recommended stipulations and consent order to include the imposition of any sanctions authorized by the Louisiana Real Estate License Law. In the written document the respondent must stipulate to having committed an act or acts in violation of the Louisiana Real Estate License Law or the Rules and Regulations of the Commission, accept the sanctions recommended by the hearing officer, and waive any rights to request a rehearing, reopening, or reconsideration by the Commission, and the right to judicial appeal of the consent order.

f. If at the informal hearing the respondent does not admit to having committed the act or acts specified, does not accept the sanctions recommended by the hearing officer, or does not waive the specified appellate rights, the alleged violations shall be referred to a formal adjudicatory hearing.

g. If the respondent does execute a stipulations and consent order, the executive director shall submit the document to the Commission at the next regular meeting for approval and authorization for the executive director to execute the consent order in the name of the Commission.

h. The actions of the Commission relative to all consent orders shall be noted in the minutes of the meeting at which the consent order is considered and at which authorization is granted to the executive director to execute the order in the name of the Commission.

i. Any consent order executed as a result of an informal hearing shall be effective on the date approved by the Commission.

##### **2. Formal Adjudicatory Proceedings**

a. All formal public adjudicatory hearings shall be conducted under the auspices of R.S. 37:1456 and Chapter 13 of Title 49 of the Louisiana Revised Statutes.

b. The order issued by the Commission pursuant to any formal public adjudicatory proceeding shall become effective on the eleventh day following the date the order is issued by the Commission and entered into the record at the proceedings.

c. The date of entry is the date the order is issued by the Commission and entered into the record at the formal adjudicatory proceedings.

d. If a request for rehearing, reopening, or reconsideration of the order of the Commission is timely filed and denied by the Commission, the order of the Commission shall become final on mailing of the notice of the Commission's final decision on the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:49 (January 2000).

#### **§4109. Appellate Proceedings**

##### **A. Rehearings**

1. An order of the Commission shall be subject to rehearing, reopening or reconsideration by the Commission on receipt of a written request from a respondent. An application for rehearing, reopening or reconsideration must be postmarked or received at the office of the Commission within ten days from the date of entry of the order rendered by the Commission.

2. The request shall be reviewed by the Commission attorney for compliance with the Administrative Procedure Act. A finding by the Commission attorney that the request does not establish grounds for rehearing, reopening or reconsideration shall result in a denial of the request.

##### **B. Judicial Review**

1. Proceedings for judicial review of an order issued by the Commission may be instituted by filing a Petition for Judicial Review in the Nineteenth Judicial District Court in the parish of East Baton Rouge.

2. In the event a request for rehearing, reopening or reconsideration has been filed with the Commission, the

party making the request shall have thirty days from the final decision on the request within which to file a petition for judicial review.

3. If a request for rehearing, reopening or reconsideration is not filed with the Commission, the Petition for Judicial Review must be filed in the Nineteenth Judicial District Court within thirty days after the mailing of the order of the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:49 (January 2000).

#### **§4111. Stay of Enforcement**

A. The filing of a petition for judicial review by a respondent licensee does not itself stay enforcement of an order issued by the Commission. A stay of enforcement will be granted only when directed by the court conducting a judicial review of adjudication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000).

#### **§4113. Costs of Adjudicatory Proceedings**

A. On a finding that a respondent has committed the violations as alleged in any formal or informal adjudicatory proceedings, the Commission may assess the respondent the administrative costs of the proceeding, as determined by the Commission. Payment of these costs shall be a condition of the reinstatement of any license, registration, or certificate issued by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000).

### **Chapter 43. Licensee, Timeshare Registrant, and Certificate Holder Responsibilities**

#### **§4301. Knowledge of the Law**

A. It shall be the duty of all licensees, certificate holders, and timeshare registrants to have knowledge and be aware of all laws regulating the real estate industry in Louisiana including, but not limited to, these rules and regulations and the Louisiana Real Estate License Law as set forth in Chapter 17, Title 37 of the Louisiana Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000).

### **Chapter 45. Franchise Operations**

#### **§4501. Registration of Franchise Name**

A. Unless registered in Louisiana with the Louisiana Real Estate Commission as hereinafter specified, no person, partnership, limited liability company, or corporation shall offer for sale, lease, rent, or use in any way, any franchise name to be publicly utilized or used by a licensed Louisiana real estate broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000).

#### **§4503. Registration of Franchise Operation**

A. Unless registered in Louisiana with the Louisiana Real Estate Commission as hereinafter specified, no person, partnership, limited liability company, or corporation engaged in a franchise operation of real estate brokerage firms shall operate in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000).

#### **§4505. Application for Registration**

A. Any person, partnership, limited liability company, or corporation which intends to operate or do business as a franchiser of real estate brokerage firms in Louisiana shall make application to the Louisiana Real Estate Commission for registration. Applications for registration shall contain the following information and supporting documents:

1. name, address, and whether the applicant is a person, partnership, limited liability company, or corporation;

2. partnership and limited liability company - the names and addresses of all partners or principals;

3. corporation - names and addresses of officers and members of the board of directors and the place of incorporation;

4. partnership, limited liability company, or corporation - a certified copy of the articles of incorporation or the document establishing the partnership or limited liability company;

5. a certified, audited financial statement disclosing the current financial condition of the applicant;

6. a statement of the business activities of the applicant, including a description of the franchise agreement to be used in connection with the Louisiana real estate brokers, and a list of the states in which the franchiser is qualified to do and/or is doing business.

B. Upon receipt of the application for registration, the Commission may require such additional information as it deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000).

#### **§4507. Agent for Service of Process**

A. If the applicant is not a resident of Louisiana, it shall appoint a licensed active Louisiana individual real estate broker to act as the applicant's agent for the service of all judicial process or legal notices directed to such applicant. Service upon the agent so designated shall be equivalent to personal service upon the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000).

#### **§4509. Annual Registration**

A. If the requirements set forth herein are met the Commission shall register the franchiser for a period of one year. The franchiser shall then renew each year by furnishing the Commission with all information as would modify or change the information previously submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000).

#### **§4511. Renewal Requirements**

A. Each application for renewal by a franchiser shall be submitted on or before January 15 of each year and shall reflect the information required by the Commission for the preceding year.

B. Any application for renewal by the franchiser shall also include the name and address of any licensed Louisiana broker that is operating under a franchise agreement with the franchiser.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000).

#### **§4513. Penalty**

A. Any person, partnership, limited liability company, or corporation which operates in Louisiana as a franchiser of real estate brokerage firms, without the specific authority to do so as granted by the Louisiana Real Estate Commission, shall be subject to a penalty of the refusal by the Commission to allow said person, partnership, limited liability company, or corporation to operate or do business in Louisiana for a period of at least one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000).

#### **§4515. Violations of Law**

A. The Commission shall have the power to withdraw any registration and/or issue a cease and desist order, after a hearing, to any franchiser that is subject to these rules and regulations, upon determination that any federal or state law or Commission regulation has been or will be violated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000).

### **Chapter 47. Waiver of Renewal Requirements**

#### **§4701. Veteran Waiver**

A. Licensees who are inducted into military service or those licensees in the military who are transferred out of state shall, upon furnishing appropriate evidence of their honorable service, be entitled to renewal of their licenses, without penalty, provided application is filed within six months following discharge. The provisions of this Section shall extend to spouses of persons described herein above who were licensed at the time of such induction or transfer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000).

### **Chapter 49. Reciprocity**

#### **§4901. Licensing**

A. The Commission may enter into a reciprocal agreement with the appropriate authority of any other state to permit any resident of that other state who is licensed there as a real estate broker or salesperson to obtain an

equivalent Louisiana non-resident license and engage in the real estate business in Louisiana if that other state agrees to similarly grant a non-resident license to any Louisiana resident broker or salesperson and permit the licensee to engage in the real estate business in that other state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000).

#### **§4903. Requirements for License**

A. Any person residing in and licensed as a real estate broker or salesperson in a state whose appropriate authority has entered into a reciprocal agreement with the Commission shall be granted an equivalent non-resident license by the Commission upon applying and complying with the following requirements:

1. providing the Commission with sufficient proof of his licensing by his resident state;

2. paying all fees prescribed for an equivalent Louisiana resident license;

3. filing an irrevocable Appointment of Agent for Service of Process with the Commission appointing the executive director as the licensee's agent for service of process in all matters arising out of or in conjunction with any real estate activities conducted by the licensee in Louisiana;

4. corporation-procuring a certificate of authority to do business in Louisiana from the Louisiana Secretary of State and providing the Commission with a copy; and

5. partnership or limited liability company-procuring a certificate of registry as a foreign partnership from the Louisiana Secretary of State and providing the Commission with a copy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000).

#### **§4905. Non-resident Licensee**

A. The non-resident licensee is bound, in all respects, by the provisions of the Louisiana Real Estate Licensing Law (R.S. 37:1431, et seq.) and these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000).

### **Chapter 51. Out-of-State Broker Cooperation**

#### **§5101. Broker Cooperation**

A. A Louisiana broker may cooperate with a licensed broker of another state in the sale, lease or management of real property located in Louisiana within the limits provided in the Louisiana Real Estate License Law and Rules and Regulations of the Commission under the following conditions.

1. The sale, lease or management shall be handled under the direct supervision and control of the Louisiana broker who shall take full responsibility for all actions of the out-of-state broker. All advertising of any kind must contain the names of both the Louisiana licensed broker and the out-of-state broker. The out-of-state broker may place a sign on real property located in Louisiana with the written consent of the Louisiana licensed broker.

2. Any monies collected on behalf of others shall be maintained in the Louisiana broker's sales escrow checking account, rental trust checking account or security deposit trust checking account unless all parties having an interest in the funds to be deposited therein have agreed otherwise in writing.

3. In each instance herein where a Louisiana broker enters into a cooperating agreement with an out-of-state broker for the sale, lease or management of Louisiana real property, the Louisiana broker must file one copy of a cooperating agreement with the Louisiana Real Estate Commission prior to the property being advertised, shown, or any contract taken. A written cooperating agreement describing the property involved must be filed for each separate transaction. This agreement must contain verbiage wherein both the Louisiana broker and the out-of-state broker agree to sign all written reports and contracts and comply with the Louisiana Real Estate License Law and Rules and Regulations of the Commission in all respects.

4. Any fee or commission received as a result of a cooperative transaction shall be paid to the Louisiana broker who will, in turn, compensate the out-of-state broker. The percentage of fees or commission to be received by the Louisiana broker and the out-of-state broker shall be negotiable between the two parties and shall be agreed upon, in writing, by the parties in their cooperative agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000).

### **§5103. Referral Fees**

A. A licensed broker in this jurisdiction may divide or share a real estate commission with a licensed broker in another jurisdiction whenever the licensed broker in the other jurisdiction acts only as a referral agent who is not involved in the actual negotiations, execution of documents, collections of rent, management of property, or other real estate brokerage activity in a real estate transaction which involves more than the mere referral of a client or customer to the licensed broker of this jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000).

### **§5105. Jurisdiction Over Out-of-State Activities**

A. The Commission shall have the power to impose any sanction permitted by this law on any licensee of this jurisdiction who performs or attempts to perform any of the acts of a licensee on property located in another jurisdiction without first having been properly licensed in that jurisdiction or otherwise having fully complied with that jurisdiction's laws regarding real estate brokerage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000).

## **Chapter 53. Real Estate Schools**

### **§5301. Education Division**

A. The Louisiana Real Estate Commission does hereby create the Education Division which shall be responsible for real estate school, instructor, and continuing education

vendor certification. The Education Division shall administer on behalf of the Commission all regulations, laws and other matters pertaining to real estate education programs under the jurisdiction of the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000).

### **§5303. Approval of Schools**

A. The following regulations apply to real estate schools seeking approval to conduct a course of education in real estate subjects for prelicensing requirements as prescribed under R.S. 37:1460.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000).

### **§5305. Course Curriculum**

A. The Commission shall require certified real estate schools to follow model curriculum guidelines established by the Commission in courses offered for salesperson and broker prelicensing credits.

B. Courses of instruction offered by certified real estate schools shall be designated as follows:

1. Real Estate 101-90 hour course in real estate principles/practices

2. Real Estate 201-90 hour basic fundamentals review for broker applicants;

3. Real Estate 202-30 hour course on Louisiana License Law, Rules and Regulations of the Commission and Louisiana Civil Law;

4. Real Estate 203-30 hour broker responsibilities course.

C. The Commission may approve real estate course work obtained through colleges, universities, nationally recognized institutes or other sources for credit toward the salesperson or broker prelicensing requirement. No waiver will be granted for Real Estate 202 and Real Estate 203 when required as a condition of licensing; however, the Education Division may authorize the substitution of course work obtained from other educational sources if it is determined that such courses are equivalent to the content requirements of Real Estate 202 or Real Estate 203.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000).

### **§5307. Certificate of Authority**

A. No person shall operate a real estate school from which the Commission will accept a certificate of completion in satisfaction of prelicensing requirements unless such person applies for and is granted a certificate of authority in good standing issued by the Commission.

B. No certificate of authority shall be issued or renewed for any school applicant holding a real estate broker license whose school is designed, intended and/or primarily used for instruction of that same broker/owner's future salesperson or broker affiliates.

C. Each applicant for a certificate of authority to operate a real estate school shall comply with the following:

1. file with the Commission a fully completed application on forms prescribed by the Commission and accompanied by appropriate fees as provided in R.S. 37:1443;

2. submit with the application three letters of reference from responsible parties which provide information relating to the applicant's integrity, character, and/or qualifications and experience in real estate or related education;

3. at application, or prior to final approval of the certificate of authority, and for each renewal period thereafter, furnish proof of coverage of a school surety bond as issued by an insurance company authorized to do business in this state, conditioned for the protection of the contractual rights of those real estate students attending said school and in the amount of \$10,000.00.

D. The Commission shall issue a certificate of authority to operate a real estate school upon a determination that the applicant has met all requirements of certification.

E. Certificates of authority issued under this Section shall be valid for a maximum of one year and shall expire on December 31 of each year.

F. Failure to submit a timely application for renewal of a certificate of authority by December 31 may result in an assessment of a delinquent penalty as provided in the Louisiana Real Estate License Law. The period for delinquent renewal of an expired certificate of authority will be limited to the six-month period immediately following the expiration date of the certificate of authority. Thereafter, the application will be treated as an initial application insofar as fees and filing information are concerned.

G. Real estate schools shall not schedule courses which will extend beyond December 31 unless renewal of the certificate of authority has been applied for and approved by the Commission.

H. All Louisiana state and private colleges and universities where a real estate course is given in a regular curriculum are exempt from filing for this certificate of authority. The Commission reserves the right to require compliance with all requirements of this Section, except for assessment of application fees, from those courses offered through continuing education divisions of colleges and universities.

I. State vocational-technical schools or parish school boards which conduct courses in real estate and receive certification from the Commission shall meet all requirements required of proprietary schools except for application fee requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000).

#### **§5309. School Owners and School Directors**

A. Each approved school shall designate a school director who shall be responsible to the Commission for all aspects of operation of the school, to include the specific courses of education to be conducted and submission of reports and other information required or requested by the Commission.

B. School directors shall coordinate school branch locations and disseminate information pertaining to changes

in the license law, rules and regulations, or policies of the Commission to all staff, instructors, and school employees.

C. School owners and school directors shall cooperate with Commission personnel in all matters pertaining to the administration of the school and shall appear and testify under oath at any hearing held by the Commission when requested to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:53 (January 2000).

#### **§5311. Instructor Qualifications**

A. Except for guest lecturers, persons instructing at a state certified school must be state certified by the Commission or hold an equivalent certification or designation acceptable to the Commission.

B. Any applicant applying for a state certified real estate instructor certificate shall file an application with the Commission in such form as prescribed by the Commission and accompanied by appropriate fees as prescribed in R.S. 37:1443, provide proof of passing a real estate instructor assessment examination specified by the Commission, and possess at least one of the following qualifications:

1. a bachelor's degree with a major in real estate from an accredited college or university;

2. a bachelor's degree from an accredited college or university and at least two years experience in the real estate business;

3. a real estate broker license and a minimum of five years experience in the area of proposed study;

4. a Juris Doctorate degree or the equivalent from an accredited law school and a minimum of three years experience in the area of the proposed study;

5. two years experience as a qualified instructor or professor in the business, finance or economics department of an accredited college or university; or

6. any qualifications which in the opinion of the Commission constitute the equivalent of one or any combination of the above mentioned qualifications.

C. An instructor certificate shall be issued only after a determination has been made by the Commission that the applicant has met the requirements of certification.

D. Instructor certificates issued under the provisions of this Section shall be valid for a maximum of one year and shall expire on December 31 of each year.

1. Failure to renew an instructor certificate by December 31 may result in the assessment of a delinquent penalty as provided in the Louisiana Real Estate License Law. The period for delinquent renewal of an instructor certificate will be limited to the six-month period immediately following the expiration date of the certificate. Thereafter, the application will be treated as an initial application insofar as fees and filing information are concerned.

2. Any application for renewal of an instructor certificate must be accompanied by proof of the applicant's successful completion of eight hours of continuing education course work approved by the Commission and completed during the current certification period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:53 (January 2000).

### **§5313. Guest Lecturers**

A. Persons selected by approved schools to instruct as a guest lecturer in an approved prelicensing course shall meet at least one of the following qualifications:

1. a college or university professor in real estate, finance, economics, or a related field;
2. a specialist with a degree or professional designation with expertise in the specific topic of instruction;
3. a licensed real estate professional with at least five years experience in the area of proposed instruction.

B. Guest lecturers shall not be utilized as instructors in prelicensing courses pertaining to the Louisiana Real Estate License Law or the Rules and Regulations of the Commission.

C. Guest lecturers shall not be used by approved schools as staff instructors. The Commission may require that guest lecturers teaching on a regular basis be required to apply for and obtain certification as a real estate instructor under §5311 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000).

### **§5315. School Facilities**

A. Every school shall utilize facilities meeting the following standards.

1. The premises, equipment and facilities of the school shall comply with all local, city, parish and state regulations, such as fire codes, building and sanitation codes.
2. The school shall provide adequate space, seating, equipment, and instructional material to accommodate the number of students enrolled and in attendance.

B. Facilities are subject to inspection by representatives of the Commission prior to approval or subsequent thereto during regular school hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000).

### **§5317. School Records**

A. Real estate schools shall maintain accurate and properly indexed records on all students for at least a five year period after course completion and shall make those records available for inspection upon request of the Commission or its representatives.

B. Real estate school records shall include, but are not limited to, the following information:

1. complete name and address of each student;
2. total classroom hours and title(s) of courses undertaken by each student;
3. dates of attendance at those courses by each student;
4. test scores or pass/fail indication for each student;
5. copy of student contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000).

### **§5319. Tuition/Fees and Student Contract**

A. Each real estate school shall enter into a written contract with each of its students.

B. The tuition and fees charged by the school for a specific course of instruction shall be clearly set forth in each student's contract, and a copy of the contract, signed by an authorized representative of the school, shall be provided to the student immediately after the contract is signed by both parties.

C. If additional fees are to be charged for supplies, materials or required books, these charges shall be clearly itemized by the school in the student contract, and such supplies, materials or books shall become the property of the student upon payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000).

### **§5321. Course Reporting Requirements**

A. Real estate schools shall submit, in a timely manner, information concerning schedules, class locations, attendance reporting affidavits and other related information as required by the Commission. The Commission will provide each school with the necessary forms and instructions for reporting course scheduling and completion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000).

### **§5323. Certificates of Completion/ Classroom Hours**

A. Each real estate school shall provide an individual certificate of completion or comparable completion verification to each student only upon successful completion of a course of study. Such verification shall include student name, date of completion, course level, number of hours completed, and shall be signed by the school director or an authorized designee.

B. No certificate of completion shall be accepted from any real estate school that is not in good standing with the Commission on the date of certificate issuance.

C. Credit shall not be given for any classroom hour consisting of less than fifty minutes of instruction and/or study. A classroom hour is defined as sixty minutes, of which fifty minutes are instruction. The prescribed number of classroom hours may include time devoted to examinations which are considered to be part of the course. Real estate schools shall not give credit to any student for completing more than eight hours of instruction in one calendar day.

D. In compliance with requirements of the Americans with Disabilities Act (ADA), alternative methods of course delivery are permitted to accommodate students with special needs. Such alternative arrangements shall be documented by the school and reported to the Commission prior to the beginning of the course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000).

### **§5325. Prohibition Against Recruiting**

A. No person shall at any time, while on the premises of a certified real estate school, discuss the sponsorship of any student by any licensee of the Commission. Schools shall display the following statement in classrooms where preclicensing courses are being taught and the school director shall ensure that the instructor of each orientation session read the following statement to the students at the beginning of the session: "No person shall discuss the sponsorship of any student by any licensee of the Commission while on the school premises, or by any means, verbal or written, conduct any activity which in any way relates to the future sponsorship of any student by any licensee of the Commission."

B. Unless an exemption has been applied for and granted by the Commission as specified in this Section, an applicant for a real estate license cannot, for a period of one year after successful completion of real estate preclicensing education, be licensed with the sponsoring broker of an owner, instructor, guest lecturer or member of the administrative staff of the real estate preclicensing school attended by said applicant. Applicants for licensing may request a waiver of this regulation provided the following conditions are met.

1. An application for exemption shall be submitted on an affidavit form provided by the Commission and contain a notarized statement from applicant and sponsor attesting to the fact that their decision to affiliate was in no way influenced by said broker's affiliation with a state certified real estate school.

2. Request shall be received and acted upon by the Commission at least ten days prior to the applicant's enrollment in a scheduled preclicensing course of study. Waiver of the ten-day requirement will be granted only upon a determination by the Commission that extenuating circumstances prevented the timely filing of the exemption request.

C. No brokerage firm may operate a real estate school under the same legal entity as the brokerage firm.

D. No real estate school shall be operated in an office that is also utilized for the operation of a brokerage firm. For the purpose of this rule, operation by a real estate school shall mean the conducting or doing business in any manner including, but not limited to, the holding of classes, the instruction of students, the use of telephone lines, the occupying of office space, and the enlistment, solicitation and/or recruitment of potential students or licensees.

E. No real estate school may provide any name or list of names of any potential licensees or students whether potential or enrolled in any real estate school to anyone other than the Louisiana Real Estate Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:55 (January 2000).

### **§5327. Change of Address**

A. Every certified real estate school, school director and certified real estate instructor shall report any change in the address or phone number of a business or residence to the Commission within 10 days of the change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:55 (January 2000).

### **§5329. School Advertising**

A. Advertising by certified schools shall be clear, concise and accurate. All advertisements shall be in the name of the real estate school as certified by the Commission and shall include the school's certificate of authority number assigned by the Commission.

B. Any advertising which includes price quotes for a course shall accurately reflect total costs including any books and materials required for the course.

C. The Commission may require that a school furnish proof of any of its advertising claims. Retractions of unfounded advertising claims may be ordered by the Commission. Such retractions shall be published in the same manner as the original claim and be paid for by the violator.

D. Real estate school advertising shall not be combined with any advertisement of a real estate brokerage business or vice versa.

E. Certified real estate schools shall not advertise or offer any guarantee to pass the state real estate licensing examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:55 (January 2000).

### **§5331. School Inspections**

A. Real estate schools certified by the Commission shall be subject to review and periodic audits by official representatives of the Commission. Representatives may observe classroom activities, evaluate course content, instructor proficiency, and/or audit school reporting/attendance records to ensure that courses are being conducted in accordance with the provisions set forth in R.S. 37:1460 and this Chapter. If the school is determined to be deficient in any of these areas, a deficiency report specifying the areas of deficiency and a date by which the deficiencies are to be corrected will be provided to the school by the Commission. Any school receiving a deficiency report shall correct any deficiencies noted by the date designated by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:55 (January 2000).

## **Chapter 55. Real Estate Post Licensing and Continuing Education Vendors**

### **§5501. Vendor Approval**

A. The following regulations apply to entities seeking approval to conduct educational courses to meet real estate post licensing and continuing education requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:55 (January 2000).

### **§5503. Application**

A. Any entity desiring to act as an approved real estate post licensing and/or continuing education vendor shall file

an application with the Commission. Each initial application shall be fully completed, notarized and accompanied by the following:

1. a financial statement of the person, partnership, corporation or legal entity which is seeking an approved education vendor certificate;
2. three letters of reference from responsible persons with information relating to applicant's integrity, character, responsibility and/or qualifications and experience in real estate education;
3. appropriate fees as required;
4. name, address and biographical information on each proposed instructor;
5. complete information on each proposed course offering; and
6. any additional information as requested and deemed necessary by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:55 (January 2000).

#### **§5505. Bond Requirement**

A. Each initial and renewal applicant for an approved post licensing and/or continuing education vendor certificate shall obtain and file with the Commission proof of coverage of a \$5,000.00 surety bond as issued by an insurance company authorized to conduct business in this state. The bond shall be in favor of the state of Louisiana and conditioned for the protection of the contractual rights of those students attending post licensing and/or continuing education courses of said vendor. In cases where state certified prelicensing real estate schools apply for and obtain a post licensing and/or continuing education vendor certificate, the school's required \$10,000.00 surety bond may be used to satisfy the requirements for prelicensing, post licensing and continuing education bond coverage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000).

#### **§5507. Application Review**

A. An initial application shall be reviewed and acted upon no later than thirty days from the date the application is received at the Commission office. If the application is rejected, the applicant may appeal the decision to the Commission. If such an appeal is made, the applicant will be required to appear before the Commission at a regularly scheduled meeting to speak on behalf of and to respond to questions and concerns pertaining to the application. If the application is denied by the Commission no further appeal will be granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000).

#### **§5509. Application Approval**

A. Upon approval of any initial application for an approved vendor certificate, the Education Division shall assign an approved vendor number to the person, partnership, corporation or legal entity granted approved

vendor status. The approved vendor number shall appear in any advertisements of approved courses by the vendor.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000).

#### **§5511. Application Denial**

A. When an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or theft, or has been convicted of a felony or a crime involving moral turpitude in any court of competent jurisdiction, such untrustworthiness of the applicant, and the conviction, may in and of itself be sufficient grounds for refusal of a certificate.

B. When an applicant has made a false statement of material fact on his application, such false statement may in and of itself be sufficient grounds for refusal of a certificate.

C. Previous revocation of a real estate license held by an applicant shall also be grounds for refusal to grant a certificate.

D. In addition to the grounds for denial of an application specified in A through C of this Section, an application for an approved vendor certificate may be rejected if the applicant fails to qualify in one or more of the following areas:

1. financial stability of applicant;
2. experience and capability of entity requesting approved vendor certificate;
3. experience and capability of proposed instructors;
4. suitability or quality of proposed course offerings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000).

#### **§5513. Certificate Renewal**

A. Approved vendor certificates shall be granted on a calendar year basis, expiring on December 31 of each year. Failure to submit a timely application for renewal by December 31 shall result in an assessment of a delinquent penalty. The period for delinquent renewal of an approved vendor certificate will be limited to the six-month period immediately following the expiration date of the certificate. Thereafter, the application will be considered as an initial application insofar as fees and filing information are concerned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000).

#### **§5515. Eligibility of Courses**

A. Post Licensing

1. Approved post licensing courses must be open to the public. Each course acceptable for credit toward fulfillment of the thirty-hour post licensing requirements for salespersons or brokers must be a minimum of four hours in length and require passage of an examination on course contents as conditions for receiving a post licensing certificate.

2. Approved continuing education courses which do not require an examination will not be considered toward post licensing requirements.

3. Approved schools and vendors shall not incorporate post licensing instruction and hours with prelicensing and/or continuing education instruction and hours.

#### B. Continuing Education

1. Approved continuing education courses must be open to the public. Courses accepted for credit toward the continuing education requirement shall consist of a minimum of two hours of instruction and may include, but are not limited to, the following subject areas:

- a. appraisal;
- b. finance;
- c. taxes;
- d. zoning;
- e. Louisiana Real Estate License Law/Commission Rules and Regulations;
- f. environmental quality;
- g. federal laws affecting real estate (includes HUD and fair housing regulations);
- h. property management.

C. Each course registered with the Commission shall expire on December 31 unless updated, submitted for renewal by the approved vendor, and approved for renewal by the Commission. The vendor shall notify the Commission of any changes in course material which may substantially alter a course offering.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000).

#### **§5517. Requirements for Submission of Additional Course Approval Requests by Approved Vendors**

A. Approved education vendors shall apply for and receive approval for any new courses to be offered by the entity prior to advertising or offering the course to licensees. Each additional course application shall be accompanied by the following items:

1. applicable filing fees;
2. complete information on proposed course including title, course description, length of course, outline, and, for post licensing only, a copy of the course final examination;
3. name, address and resume' of each proposed instructor, if applicable.

B. If a request for additional course approval is rejected, the vendor may appeal the decision to the Commission. No additional review fee will be required for such an appeal. If the request is denied by the Commission no further appeal will be granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:57 (January 2000).

#### **§5519. Post Licensing and Continuing Education Course work by Correspondence**

A. Approved education vendors shall apply for and receive approval of correspondence study course(s) prior to any public offering. Passage of an examination is a requirement for all post licensing courses. Passage of an

examination is not a requirement for classroom continuing education courses; however, licensees choosing to complete their continuing education through correspondence or distance learning courses will be required to comply with specific course completion verification procedures applicable to correspondence or distance learning courses. Each correspondence course application shall be accompanied by the following items:

1. applicable filing fees;
2. complete information on proposed course, including title, course description, length of course, outline, and a copy of the required test.

B. Applications for approval of correspondence courses shall comply with the following where applicable.

1. Written correspondence courses
  - a. A workbook consisting of a minimum of 20 typed pages, not smaller than 8 1/2" x 11" in size, per two hours of continuing education correspondence study credit or a workbook consisting of a minimum of 40 typed pages, not smaller than 8 1/2" x 11" in size, per four hours of post licensing education is required. If the course meets only the minimum of pages, the type cannot be larger than 12 point. Minimum standards require that paragraphs may be indented not more than 10 spaces and a maximum of one line of space may appear between paragraphs. Charts and graphs are not to be included in the required minimum page total. The top margin of the page cannot exceed 1 1/2", the bottom margin 1 1/2", and the side margin 1". The Commission reserves the right to approve an offering which marginally meets the minimum page requirement. Such approval will be based on a determination that the time period required to complete the course exceeds the credit hours requested based on the technical nature of the subject matter.

2. Audio/visual correspondence courses
  - a. Video taped material may be submitted for approval as a complete course offering or in conjunction with written correspondence. The applicant shall provide a complete written transcript of any video taped material submitted for approval.

2. Audio only courses shall be formatted in segments consisting of taped lecture of at least two hours for continuing education purposes or at least four hours for post licensing purposes. The applicant shall submit a written transcript of the taped lecture with each request for audio approval.

3. Computer generated correspondence courses
  - a. Computer generated correspondence courses will be considered for approval provided the applicant submits course materials in the exact format to be offered for education credit.

2. The Commission, at its discretion, may request a written transcript of a proposed computer generated course offering prior to a final determination of the suitability of the course for education credit.

4. Other distance learning education
  - a. Distance learning education courses may be considered for approval provided the courses meet the conditions for delivery specified in the standards for distance education established by the Association of Real Estate License Law Officials (ARELLO) and provided the course content is in a real estate subject approved by the

Commission for post licensing or continuing education credit for Louisiana licensees.

C. Every correspondence course for post licensing or continuing education shall require students to complete a written test consisting of a minimum of twenty multiple choice questions with four possible choices (a,b,c and d) for each two hours of continuing education credit or a minimum of forty multiple choice questions with four possible choices (a,b,c and d) for each four hours of post licensing credit. The written assignment or test a student submits for grading shall include the following statement:

I certify that I have personally completed this assignment.

Student's Signature \_\_\_\_\_ Date \_\_\_\_\_

D. All courses submitted for approval shall be in the exact format in which they will be sold to licensees for post licensing or continuing education credit.

E. No changes will be made to approved correspondence course material without the prior written approval of the Commission.

F. Education vendors shall:

1. have the student's name, social security number, address and payment prior to the student receiving the course;

2. not grade any written assignment or examination if it is presented for grading before the time frame for course completion has been reached;

3. not grade any test which does not contain the signed certification required by paragraph C, above;

4. certify students as successfully completing a course only if the student completes any required written assignments and pass the required examination on course content;

5. issue certificates containing the following information to students completing education by correspondence:

a. complete name of approved vendor and LREC vendor code;

b. name and social security number of student completing course;

c. specific course title;

d. number of hours of education received;

e. date of course completion;

f. signature of verifier of course completion;

g. indication that student successfully completed examination on course content;

h. correspondence study completion noted with the notation, "correspondence" or "C".

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:57 (January 2000).

#### **§5521. Post Licensing and Continuing Education Instructor Qualifications**

A. With the exception of guest lecturers, only those persons meeting at least one of the following qualifications will be permitted to instruct approved post licensing and continuing education courses on a regular basis:

1. a state certified real estate instructor holding a current certificate;

2. a college or university professor in real estate, finance, business, economics, or related field;

3. a specialist with a degree or designation and experience teaching the subject(s) of proposed instruction; or

4. a licensed real estate professional with at least five years experience in the area of proposed instruction.

B. Guest lecturers shall not be utilized as instructors in courses pertaining to the Louisiana Real Estate License Law or the Rules and Regulations of the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:58 (January 2000).

#### **§5523. Prohibition of Recruiting**

A. No person shall, at any time, while on the premises or facilities where an approved education course is being taught, discuss the sponsorship of any student by any licensee of the Commission. Approved vendors shall display the following statement in classrooms where continuing education courses are being taught: "No person shall discuss the sponsorship of any student by any licensee of the Commission while on these premises, or by any means, verbal or written, conduct any activity which in any way relates to the future sponsorship of any student by any licensee of the Commission."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:58 (January 2000).

#### **§5525. Course Fees**

A. When fees are charged for an approved course offering, vendors shall enter into a signed written agreement with each individual stipulating the cost of the course and the vendor's refund policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:58 (January 2000).

#### **§5527. Course Completion Verification and Reporting Requirements**

A. Each approved vendor shall provide written verification of attendance to each course participant and shall provide the Commission, on a monthly basis, attendance verification on each participant. Approved vendors may be required to use a standard certificate as specified by the Commission. Verifications shall include, but may not be limited to, the following:

1. complete name of approved vendor and LREC vendor code;

2. name and social security number of participant;

3. specific course title;

4. number of hours completed;

5. date and, if applicable, an indication of successful completion of an examination on course content;

6. signature of verifier of the course completion;

7. when applicable, correspondence study completion noted.

B. Approved vendors shall submit to the Commission monthly schedules of course offerings and attendance verification reports on each completed course. Such schedules shall be submitted to be received by the

Commission at least ten days prior to the beginning of each month. The information is to be submitted on forms provided by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:58 (January 2000).

#### **§5529. Record Keeping**

A. Approved vendors shall maintain, for five years, attendance records on each person completing an approved course offering. In cases where a participant requires a duplicate of an attendance/verification record, it is the responsibility of the vendor to provide a proof of completion verification to the participant. Reasonable fees, if assessed for duplicate records, are to be determined by the vendor.

B. Approved vendors shall maintain properly indexed information on each approved offering, including all records of attendance/verification reports submitted to the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000).

#### **§5531. Inspection or Monitoring of Approved Vendors/Courses**

A. Commission representatives may audit any approved course offering to determine adequacy of course presentation, content and compliance with post licensing and/or continuing education regulations.

B. Commission representatives may inspect vendor records during regular business hours to determine compliance with record keeping requirements specified in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000).

#### **§5533. Prelicensing Schools Offering Post Licensing and Continuing Education Courses**

A. In addition to prelicensing courses, any state certified real estate school may offer post licensing and continuing education courses, provided the school applies for and receives approved continuing education vendor status. No additional initial or renewal fees will be required of the school; however, filing fees for each additional course approval request will be required as provided in R.S. 37:1443.

B. A separate Louisiana Real Estate Commission vendor code will be assigned to the school upon compliance with post licensing and/or continuing education requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000).

#### **§5535. Advertisement**

A. All advertisements by approved vendors shall state the exact name of the vendor as registered with the Commission and the LREC vendor code number assigned by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000).

#### **§5537. Change of Address**

A. Any change in the address or telephone number of the administrative offices of an approved vendor shall be reported to the Commission within ten days of the effective date of such change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000).

#### **§5539. Post Licensing and Continuing Education on an Individual Basis**

A. The Commission will consider for credit, on an individual basis, course work completed by licensees through non-approved providers including, but not limited to, colleges and universities, national appraisal organizations, the societies, institutes, and councils of the National Association of REALTORS<sup>®</sup>, National Association of Real Estate Brokers, and federal, state and local governmental entities.

B. Licensees seeking approval for course work obtained through non-registered vendors/providers shall apply for such approval by submitting documentation of attendance, hours completed, date of attendance, and detailed course content information and, if applicable, verification of successful completion of an examination on course content.

C. The Commission may approve, on a one time basis, courses offered by entities not registered as approved vendors with the Commission. Such approvals may be granted to no more than three specific locations per non-registered vendor and shall be limited to two courses per non-registered vendor within a one year period. Non-registered vendors requesting approval beyond this limit will be required to submit an application and receive approval as an approved vendor to be eligible to offer additional courses for post licensing and/or continuing education credit. Entities requesting approval under this provision shall comply with specific application and reporting procedures required by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000).

#### **§5541. Commission Sponsored Seminars/ Continuing Education Only**

A. As required by law, each year the Commission will provide annual continuing education courses sufficient to satisfy the mandatory continuing education requirement at no additional cost to the licensee.

B. Funds for the Commission sponsored programs are derived from the Real Estate Research and Education Fund as provided in R.S. 37:1464.

C. Licensees attending Commission sponsored seminars shall comply with all attendance requirements and shall not engage in conduct that is abusive, threatening or in any way degrading the representatives of the Commission who have been assigned to monitor the seminars, or to any other

person present at the seminar. Licensees who engage in such conduct shall be directed to immediately leave the premises and a written report of the incident will be completed and submitted to the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000).

#### **§5543. Seminar Instructor Qualifications**

A. Instructors teaching Commission sponsored seminars shall qualify in one of the following categories:

1. a state certified real estate instructor's certificate in good standing with the Commission;
2. a college or university professor in real estate, finance, business, economics or related field; or,
3. a specialist with a degree or designation with at least five years experience in the area of proposed course instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (January 2000).

#### **§5545. Minimum Length of Courses**

A. Courses of instruction for continuing education purposes will not be approved by the Commission if the total instruction time is less than two hours. Courses of instruction for post licensing purposes will not be approved by the Commission if the total instruction time is less than four hours. Time devoted to breakfasts, luncheons, dinners or other refreshments shall not be counted as instruction time.

B. Credit shall not be given for any classroom hour consisting of less than fifty minutes of instruction and/or study. A classroom hour is defined as sixty minutes, of which fifty minutes are instruction. The prescribed number of classroom hours may include time devoted to examinations if a required part of the course. Vendors shall not grant credit to any student for completing more than eight hours of instruction in one calendar day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (January 2000).

### **Chapter 57. Timeshares**

#### **§5701. Requirements for Processing**

A. Every applicant for initial registration as a timeshare developer or timeshare salesperson shall submit to the Commission a fully completed application on a form provided by the Commission accompanied by the prescribed fees.

B. Every application for an initial timeshare salesperson registration shall contain the name of the developer for whom the applicant will be working following registration and shall be signed by a designated representative of that developer.

C. Applicants for registration as timeshare developers shall submit the following to the Commission at the time of filing for registration:

1. sample copies of the conveyance and financing forms and, when applicable, copies of the public offering statement and a certified copy of the timeshare declaration;

2. when applicable, an affidavit, signed by the chief executive officer or managing partner of the developer and by any natural person having an ownership interest exceeding ten percent in either the developer or entities which control it, that states under penalty of perjury that the affiant has read the timeshare declaration and all attached documents, and that they are true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (January 2000).

#### **§5703. Receipt of Application**

A. Every application shall be received and approved by the Commission prior to the date the applicant engages in the business of selling timeshare interests within this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (January 2000).

#### **§5705. Bonds**

A. At the time of initial application, each applicant for registration as a timeshare developer shall provide evidence of one bond issued in favor of the state by a surety company authorized to do business in this state in the amount of \$1,000 dollars per unit week included in the timeshare plan in accordance with R.S. 9:1131.4D.

B. At the time of initial application, each applicant for registration as a timeshare interest salesperson shall provide evidence of one bond issued in favor of the state by a surety company authorized to do business in this state in the amount of \$10,000.00 in accordance with R.S. 37:1437.1E.

C. A new bond or a renewal or continuation of the original bond shall be required for each registration period. If a continuous bond is filed, no new or renewal bond is required as long as the continuous bond remains in force and effect.

D. In the event a bond is revoked or canceled by the surety company, the timeshare registration of the named bondholder shall automatically be suspended until such time as a new bond is filed with the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (January 2000).

#### **§5707. Fees**

A. Registration fees shall cover a period of one calendar year and shall not be prorated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (January 2000).

#### **§5709. Automatic Suspension for Non-Renewal**

A. If a developer's timeshare registration is suspended or revoked, no sales of timeshare interests in that project may be conducted by that developer, by any timeshare sales registrant working for that developer, or by any licensed real estate broker or salesperson working with that developer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (January 2000).

#### **§5711. Terminations**

A. A developer who wishes to terminate an association with a sales registrant shall return the registrant's sales registration certificate to the Commission along with a properly executed transfer form as provided by the Commission.

B. A sales registrant who wishes to terminate an association with a developer shall request, in writing, that the developer return that registrant's sales registration certificate to the Commission, and shall sign the appropriate transfer form as proof of the request.

C. A sales registrant may transfer to another developer upon submission of a property executed transfer form signed by both the registrant and a designated representative of the developer. This transfer request shall be accompanied by a new bond and appropriate transfer fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000).

#### **§5713. Advertising**

A. Any advertising material relating to a timeshare plan or solicitation shall be filed with the Louisiana Real Estate Commission by the developer prior to use. All such advertising shall be in compliance with R.S. 9:1131.12.

B. The developer shall file each prize and gift promotional offer to be used in the sale of timeshare interests with the Commission prior to its use.

C. Prize and promotional offers shall be accompanied by a filing fee in accordance with R.S. 37:1443. Each filing of a prize and gift promotional offer with the Commission shall be in compliance with R.S. 9:1131.13.G.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000).

#### **§5715. Establishment of Escrow Account**

A. Where applicable, the developer of each timeshare plan that has timeshare property located in Louisiana, or who maintains a sales office in Louisiana for the sale of timeshare interests, shall establish interest bearing escrow accounts in the developer's name at a financial institution in the parish where the timeshare property or sales office is located, in accordance with R.S. 9:1131.16 and 17.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000).

#### **§5717. Affidavit of Authority**

A. Every developer of a timeshare plan shall submit to the Commission notarized affidavits attesting to the existence, location and account number of the developer's escrow accounts. The affidavits shall authorize and empower the Commission or its representatives to examine, inspect, and/or copy the developer's escrow accounts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000).

#### **§5719. Escrow Account Closing**

A. Every developer shall notify the Commission of his intention to close an escrow account at least ten days prior to the intended closing date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000).

#### **§5721. Maintaining an Escrow Account**

A. Upon revocation, suspension or lapse of registration, a developer shall nevertheless continue to maintain all escrow accounts until such time as all monies have been disbursed according to law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000).

#### **§5723. Change of Address**

A. Every registrant shall report in writing any change in business or residence address or telephone number to the Commission within ten days of the change. Such notification shall be by hand delivery or certified mail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000).

#### **§5725. Payment to Non-Registrants**

A. Timeshare registrants, in accordance with the provisions of R.S. 37:1446.A, shall not offer or pay a fee or any other compensation of any kind to any unregistered person for the purpose of obtaining any timeshare solicitations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000).

#### **§5727. Developer Records**

A. Every developer shall retain, for at least five years, readily available and properly indexed copies of all documents which in any way pertain to the sale or solicitation of timeshare interests in which he has acted as a developer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000).

Julius C. Willie  
Executive Director

001#027

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741~~0~~ Louisiana Handbook for School Administrators and Bulletin 746~~0~~ Louisiana Standards for State Certification of School Personnel~~0~~ Employment of School Superintendents (LAC 28:I.901 and 903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted an amendment to Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975), and an amendment to Bulletin 746, Louisiana Standards for State Certification of School Personnel, referenced in LAC 28:I.903.A. The amendment to Bulletin 741 adds Standard 1.016.01 which will enable a school district with a K-12 population in excess of 45,000 students (Orleans, East Baton Rouge, Jefferson and Caddo Parishes), through its locally authorized governing board, to select a superintendent who does not hold a valid state issued teaching certificate provided that the district appoints a chief academic officer whose primary and substantial job description consists of governing academics including curriculum and instruction. This chief academic officer must hold a valid teaching certificate, meet all BESE criteria set forth for superintendents, and must be appointed no later than 120 days after the superintendent's appointment. The addition to Bulletin 746 references Bulletin 741 for allowable circumstances for waivers of the above requirements.

**Title 28  
EDUCATION**

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

**§901. School Approval Standards and Regulations**

**A. Bulletin 741**

\* \* \*

AUTHORITY NOTE: Promulgated by the Board of Elementary and Secondary Education in R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 24:1085 (June 1998), LR 26:62 (January 2000).

**Bulletin 741~~0~~ Louisiana Handbook for School Administrators**

**1.016.01** In the event that a school district in Louisiana, through its locally authorized governing board, chooses to select a superintendent who does not hold a valid state issued teaching certificate, such school district may appoint the candidate provided that:

- a) the district appoint a chief academic officer whose primary and substantial job description shall govern the academics of the district including curriculum and instruction;
- b) the chief academic officer possess a valid state issued teaching certificate;
- c) the chief academic officer also meet all criteria required of a superintendent set forth in existing SBESE policy;

d) this shall only effect districts with a K-12 population in excess of 45,000 students;

e) provide that the chief academic officer be appointed no later than 120 days after the appointment of the superintendent candidate.

\* \* \*

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

**A. Bulletin 746**

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 24:283 (February 1997), LR 24:1091 (June 1998), LR 26:62 (January 2000).

**Bulletin 746~~0~~ Louisiana Standards for State Certification of School Personnel**

Addition to Bulletin 746:

Allowable circumstances for waiver of these requirements are addressed in Bulletin 741, Louisiana Handbook for School Administrators.

Weegie Peabody  
Executive Director

0001#008

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 746~~0~~ Louisiana Standards for State Certification of School Personnel~~0~~ Policy on Suspension, Revocation, and Reinstatement of Certificates for Criminal Offenses (LAC 28:I.903)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted an addition to be added to Bulletin 746, Louisiana Standards for State Certification of School Personnel, referenced in LAC 28:I.903.A. The proposed amendment adds the policy on suspension, revocation, and reinstatement of certificates for persons who have been convicted of any offense listed in R.S. 15:587.1(C) or any felony offense.

**Title 28  
EDUCATION**

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

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

**A. Bulletin 746**

B. - D.3. ...

E.1.a. - e. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:193, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 24:283 (February 1998), LR 24:1091 (June 1998), LR 26:62 (January 2000).

## **Suspension, Revocation, and Reinstatement of Certificates for Criminal Offenses**

I. A Louisiana teaching certificate shall be suspended and revoked if the individual holding the certificate has been convicted of any offense listed in R.S. 15:587.1(C) or any felony offense whatsoever.

II. For the purposes of this policy

The term "offense" or "crime" shall include those listed in R.S. 15.587.1(C) and any felony offense whatsoever.

The term "teaching certificate" or "certificate" shall include any license, permit, or certificate issued by the Certification and Higher Education section of the Department of Education.

The term "teacher" shall include any person holding any permanent, ancillary, or temporary teaching certificate.

The term "convicted" or "conviction" shall include any proceedings in which the accused pleads guilty or no contest and those proceedings that are tried and result in a judgement of guilty.

The term "Department" refers to the Louisiana Department of Education.

The term "Board" refers to the Board of Elementary and Secondary Education as a whole and/or any of its standing committees.

III. Any conviction that results in a suspended sentence pursuant to Articles 893 or 894 of the Louisiana Code of Criminal Procedures, shall be treated as a conviction for the purposes of suspension and/or revocation.

Gubernatorial pardons, first offender pardons, and expungement may be used as evidence of rehabilitation, but shall not preclude suspension and/or revocation of a teaching certificate.

IV. When the Department is notified that any teacher has been convicted of a specific crime

A. Department staff shall attempt to contact the teacher to inform him/her that the Department has information regarding a criminal conviction and is proceeding under this policy to suspend the certificate.

B. The teacher shall have 10 working days from the date of notification to provide verification that he/she has not been convicted of a criminal offense. This opportunity for response is intended as a check against mistaken identity or other incorrect information and the requested verification may be provided through a telephone conversation or written correspondence.

C. If the Department determines that there is evidence that a teacher has been convicted of a criminal offense, that teacher's certificate shall be suspended. The Board, the teacher, and the employing school system shall be notified that the teacher's certificate has been suspended pending official Board action.

D. The teacher shall be notified by certified mail and by any other appropriate means of notice that his/her certificate has been suspended and that a hearing will be conducted by the Board to consider revocation.

E. If the teacher cannot be reached and/or if his/her employment status cannot be determined, suspension of the certificate shall proceed as will all other steps in the process outlined in this policy.

F. A teacher may contact the office of the Board of Elementary and Secondary Education and request a hearing prior to the date set for the revocation consideration by the

Board. Such hearing will be limited to a determination of the individual's true identity and true conviction status. The teacher shall provide copies of any documents that verify his/her identity and refute the existence of a criminal conviction.

V. Upon official action by the Board, any teacher whose certificate has been revoked, shall be notified of such action by certified mail. The correspondence shall include instructions for and identification of the date when the individual may apply to the Board for reinstatement of his/her certificate.

VI. If the conviction upon which a teacher's certificate has been suspended and/or revoked is reversed, set aside, or vacated, such action may be communicated to the Board through documentation from the court in which the conviction occurred. The Board may receive such information and order immediate reinstatement of the teacher's certificate.

VII. Time Restrictions on Applications for Reinstatement

A. Reinstatement will never be considered for teachers convicted of the following crimes: 14:30, 14:30.1, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.2, 14:43.3, 14:43.4, 14:44, 14:45, 14:78, 14:79.1, 14:80, 14:81, 14:81.1, 14:81.2, 14:86, 14:89, 14:89.1, 14:93, 14:93.2.1, and 14:286.

B. For other final convictions rendered 0 to 3 years prior to revocation, reinstatement will not be considered for at least 3 years from the date of revocation or voluntary forfeiture of the certificate, whichever is earlier.

C. For other final convictions rendered 4 to 6 years prior to revocation, reinstatement will not be considered for at least 2 years from the date of revocation or voluntary forfeiture of the certificate, whichever is earlier.

D. For other final convictions rendered 7 to 9 years prior to revocation, reinstatement will not be considered for at least 1 year from the date of revocation or voluntary forfeiture of the certificate, whichever is earlier.

E. For other final convictions rendered more than 9 years prior, a teacher may apply immediately for reinstatement.

VIII. Procedures for Reinstatement

A. An individual may apply to the Board for reinstatement of his/her teaching certificate after the lapse of time indicated above and under the following conditions.

1. There have been no other arrests or convictions (the applicant must provide a current background check that is clean and clear).

2. There has been successful completion of all conditions/requirements of parole and/or probation (the applicant must provide copies of court records, sentencing recommendations, probation release forms, etc. and written verification that all requirements have been completed and/or met).

3. There is documented evidence of rehabilitation (the applicant is responsible for providing copies of every requested document).

B. The applicant must:

1. contact the office of the Board of Elementary and Secondary Education;

2. provide each item identified above (VIII.A.1 and 2) and below (VIII.C.1 through 6);

3. request a reinstatement hearing.

C. Evidence of rehabilitation shall include but not be limited to:

1. letter of support from a local district attorney;
2. letter of support from a local judge;
3. letter of support from the applicant's parole/probation officer, local police chief, or local sheriff
4. letter of support from a local school superintendent;
5. letter of support from a local community person (business owner, minister, priest, rabbi, city council person, etc.);
6. other letters of support or written reports that verify the applicant's rehabilitation.

D. The Board is not required to conduct a reinstatement hearing and may summarily deny a request for reinstatement.

E. If the Board or its designees decide to conduct a reinstatement hearing, Board staff shall notify the applicant of a date, time, and place when a committee of the Board shall consider the applicant's request. The applicant may be represented/accompanied by legal counsel. In addition to the applicant and his/her legal counsel, a maximum of three witnesses may be called to provide testimony regarding the applicant's rehabilitation. The written documentation provided prior to the hearing will also be considered.

F. The committee of the Board shall make a recommendation to the full Board regarding whether the applicant's teaching certificate should be reinstated, suspended for an additional period of time, or remain revoked. Board staff shall notify the applicant of the Board's action.

IX. The Board of Elementary and Secondary Education reserves the right to accept or reject any document or testimony offered as evidence of rehabilitation.

The Board of Elementary and Secondary Education reserves the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible for a teaching certificate.

Note: The Administrative Procedure Act shall be applied where applicable (R.S. 49:950, et seq.).

Weegie Peabody  
Executive Director

0001#011

#### **RULE**

#### **Board of Elementary and Secondary Education**

#### **Bulletin 1566~~6~~ Guidelines for Pupil Progression (LAC 28:XXXIX.307)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education amended Bulletin 1566, Guidelines for Pupil Progression. The amendment changes the approval and submission process of plans to the Department of Education. Plans will no longer be approved by the Department of Education.

#### **Title 28**

#### **EDUCATION**

#### **Part XXXIX. Bulletin 1566~~6~~ Guidelines for Pupil Progression**

#### **Chapter 3. General Procedure for Development; Approval and Revision of a Pupil Progression Plan**

#### **§307. Submission Process**

A. Upon adoption for submission by the local school board, the plan along with a formal submission statement shall be submitted annually to the Office of Student and School Performance. Documentation of input in the plans development by educators and parents as well as public notice prior to local board approval (including dates and locations) must be submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 1999), amended LR 26:64 (January 2000).

Weegie Peabody  
Executive Director

0001#012

#### **RULE**

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

#### **Tuition Opportunity Program for Students (TOPS)~~6~~ Eligibility (LAC 28:IV.703 and 803)**

The Louisiana Student Financial Assistance Commission (LASFAC) amends rules of the Tuition Opportunity Program for Students (TOPS) (R.S. 17:3042.1 and R.S. 17:3048.1).

#### **Title 28**

#### **EDUCATION**

#### **Part IV. Student Financial Assistance~~6~~ Higher Education Scholarship and Grant Programs** **Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity; Performance and Honors Awards**

#### **§703. Establishing Eligibility**

A. - A.4.g. ...

5.a. graduate from a BESE-approved, provisionally-approved, or probationally-approved public or nonpublic Louisiana high school or eligible non-Louisiana high school as defined in §1703.A.3; and

i. at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work constituting a core curriculum as follows:

Units	Course
1	English I
1	English II
1	English III

1	English IV
1	Algebra I (one unit) or Applied Algebra 1A and 1B (two units)
1	Algebra II
1	Geometry, Trigonometry, Calculus or Comparable Advanced Math
1	Biology I
1	Chemistry I
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II or Physics, Physics II or Physics for Technology
1	American History
1	World History, World Culture, Western Civilization or World Geography
1	Civics and Free Enterprise (one unit combined) or Civics (one unit, nonpublic)
1	Fine Arts Survey; (or substitute two units Performance courses in Music, Dance and/or Theater; or two units of Studio Art or Visual Art; or one elective from among the other subjects listed in this core curriculum)
2	In the Same Foreign Language (one unit or credit for three or more hours of college foreign language for students graduating from high school during the 1996-97 and 1997-98 school years).
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; (or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum)

ii. for purposes of satisfying the requirements of §703.a.5.a.i, above, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses:

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	General Science
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II and III
Geometry, Trigonometry, Calculus, or Comparable Advanced Mathematics	Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics
Fine Arts Survey	Speech Debate (2 units)
Western Civilization	European History

or  
A.5.b. - G.2. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 17:959 (October 1991), amended LR 22:338 (May 1996), LR 23:1648 (December 1997), repromulgated LR 24:632 (April 1998), amended LR 24:1902 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64 (January 2000).

**Chapter 8. TOPS-TECH Award**

**§803. Establishing Eligibility**

A. - A.6.c. ...

d. for purposes of satisfying the core curriculum requirements for a TOPS-Tech award, a student may substitute for a core curriculum course those courses listed as equivalent courses in §703.A.5.a.ii.

A.7. - 11. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance,

LR 24:1898 (October 1998), amended LR 24:2237 (December 1998), LR 26:65 (January 2000).

Jack L. Guinn  
Executive Director

0001#020

**RULE**

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

Tuition Opportunity Program for Students (TOPS) Scholarship and Grant Program (LAC 28:IV.103, 301, 701-705, 803, 805, 903, 907, 1701, and 2101)

The Louisiana Student Financial Assistance Commission (LASFAC) hereby adopts the following.

**Title 28**

**EDUCATION**

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

**Chapter 1. Scope**

**§103. Purpose**

A. - C. ...

D. LAC 28:IV shall be amended and updated as necessary. Such updates will be forwarded to institutions in the form of Scholarship and Grant Program Memoranda (SGPM). SGPM will cover additions, deletions, revisions and clarifications to the rules and regulations. In compliance with Act 1302 of the 1999 Regular Session of the Legislature, SGPM shall be mailed to the President and Superintendent of each City and Parish School Board in the State, the principal of each high school in the state for distribution to all high school counselors at each high school, the Chancellor, Director of Financial Aid, and Business Office of each public postsecondary school in the state, and the Chancellor, Director of Financial Aid, and Business Office at each regionally accredited independent college or university in this state which is a member of the Louisiana Association of Independent Colleges and Universities.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 17:959 (October 1991), amended LR 22:338 (May 1996), LR 24:632 (April 1998), LR 24:1897 (October 1998), LR 26:65 (January 2000).

**Chapter 3. Definitions**

**§301. Definitions**

\* \* \*

*Award Amount* an amount equal to Tuition at the school attended, for those students attending a Louisiana public college or university, as determined by the commission, which may be used by the student to pay any educational expense included in that student's "Cost of Attendance."

\* \* \*

*Cumulative High School Grade Point Average* the final cumulative high school grade point average calculated on a 4.00 scale for all courses attempted. Effective for high school graduates in the academic year 2002-2003, the

Cumulative High School Grade Point Average shall be calculated by using only the course grades achieved for those courses included in the core curriculum and recorded on the official transcript reported to the Louisiana Department of Education. In the event a student has received credit for more than 16.5 hours of courses that are included in the core curriculum, the Cumulative High School Grade Point Average shall be calculated by using the course in each core curriculum category for which the student received the highest grade. For example, if a student has taken more than one Advanced Mathematics course, the Cumulative Grade Point Average shall be determined by using only the course in which the student has received the highest grade. For those high schools that utilize other than a 4.00 scale, all grade values must be converted to a 4.00 scale utilizing the following formula:

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} = \frac{X(\text{Converted Quality Points})}{4.00(\text{Maximum Scale})}$$

$$\frac{3.00}{5.00} = \frac{X}{4.00}$$

By cross multiplying,  $5X = 12$ ;  $X = 2.40$

Quality points = Credit for course multiplied by the value assigned to the letter grade.

\* \* \*

*Eligible Noncitizen* an individual who can provide documentation from the Immigration and Naturalization Service (INS) that he is in the U.S. for other than a temporary purpose with the intention of becoming a citizen or permanent resident. Including, but not limited to, refugees, persons granted asylum, Cuban-Haitian entrants, temporary residents under the recent Immigration Reform and Control Act of 1986, and others. A permanent resident of the U.S. must provide documentation from the INS to verify permanent residency. For 1997, 1998, and 1999 high school graduates, an Eligible Noncitizen shall be treated as meeting the citizenship requirements for an award under this Part.

\* \* \*

*Louisiana Resident*

a. any independent student or any dependent student with at least one parent or legal guardian who has resided in the state for a minimum of 24 consecutive months immediately preceding a certain date or the date of a specified event that is further defined by the programs found in Part IV of these rules, or some other period of residency which is required to qualify the person for a specific program administered by the LASFAC. To qualify for a program under Part IV of these rules, in addition to the certification of residency found on the application form, the administering agency may require an independent student applicant or the parent(s) or legal guardian of a dependent student applicant to show proof of residency. Residency may be established by completion of a standard affidavit developed by the administering agency. Such affidavits must be completed in their entirety by the independent student applicant or by at least one parent or legal guardian of the dependent student applicant and be sworn to and notarized

by a licensed notary public. Further, the affiant shall be required to submit records in support of the affidavit to include the following records and such other records as may be required by the administering agency:

- i. if registered to vote, a Louisiana voters registration card; and
- ii. if licensed to drive a motor vehicle, a Louisiana driver's license; and
- iii. if owning a motor vehicle located in Louisiana, a Louisiana registration for that vehicle; and
- iv. if earning a reportable income, a Louisiana tax return.

b. any member of the Armed Forces on active duty whose official military personnel or pay records show that the member claims Louisiana as his home of record and who has filed a Louisiana tax return for the most recent two years in compliance with a.iv. above.

c. any member of the Armed Forces who is stationed in Louisiana under permanent change of station orders and who, not later than sixty days after reporting to such station, changes his military personnel records to establish Louisiana as his official home of record, and complies with all Louisiana income tax laws and regulations while stationed in Louisiana. A copy of a completed residency affidavit and a DD Form 2058 validated by the member's military personnel officer and showing Louisiana as the member's state of legal residence, must be submitted to the Louisiana Office of Student Financial Assistance (LOSFA) at the time the service member's dependent applies for TOPS. The DD Form 2058 must reflect that it was filed within sixty days after the member reported to duty at a duty station in Louisiana.

\* \* \*

*Steady Academic Progress* the maintenance of a minimum cumulative grade point average of 2.00 on a 4.00 scale. Students will be required to maintain Steady Academic Progress effective for the beginning of the 1999 Fall Semester.

\* \* \*

*Undergraduate Student* a student who has not completed the requirements for a baccalaureate degree program and/or is not classified as a professional student for the purposes of receipt of federal student aid.

*Weighted Average Award Amount* for those students attending a regionally accredited independent college or university in this state which is a member of the Louisiana Association of Independent Colleges and Universities, the total dollar value of awards made under TOPS in the prior academic year, excluding award stipends, to students attending public colleges and universities that offer academic degrees at the baccalaureate level, divided by the total number of students that received the awards.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 17:959 (October 1991), amended LR 22:338 (May 1996), LR 23:1645, 1648 (December 1997), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000).

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

**§701. General Provisions**

A. - E.4. ...

5. Students attending a regionally accredited independent college or university which is a member of the Louisiana Association of Independent Colleges and Universities (LAICU) receive an amount equal to the Weighted Average Award Amount, as defined in §301, plus any applicable stipend.

E.6. - E.9. ...

10. Award Amounts shall be credited to a student's account with the institution and shall be used consistent with the institution's policy, and as directed by the student, to pay for those educational expenses included in the Cost of Attendance.

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 17:959 (October 1991), amended LR 22:338 (May 1996), LR 23:1645, 1648 (December 1997), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25:256 (February 1999), LR 26:67 (January 2000).

**§703. Establishing Eligibility**

A. To establish eligibility for a TOPS Opportunity, Performance or Honors Award, the student applicant must meet all of the following criteria:

1. be a U.S. citizen and be registered with the Selective Service, if required, unless the institutional Financial Aid Officer determines that failure to register was not willful, provided however, that a student who is not a citizen of the United States but who is eligible to apply for such citizenship shall be deemed to satisfy the citizenship requirement, if within sixty (60) days after the date the student attains the age of majority, the student applies to become a citizen of the United States and obtains such citizenship within one year after the date of the application for citizenship. Those students who are eligible for U.S. citizenship and who otherwise qualify for a TOPS award, will continue to satisfy the citizenship requirements for a TOPS award for one year after the date of the student's application for citizenship, at which time, if the student has not provided proof of U.S. citizenship to the Office of Student Financial Assistance, the student's TOPS award will be suspended until such time as proof of citizenship is provided;

A.2 - C. ...

D. Students who have qualified academically for more than one of the TOPS awards, excluding the TOPS Teacher Award, shall receive the award requiring the most rigorous eligibility criteria, unless the student chooses to receive the TOPS Tech Award. The student will be deemed to have chosen the TOPS Tech Award if that student enrolls in a non-academic program of study pursuing a skill or occupational training at a Louisiana public postsecondary school. Once a student has enrolled in a skill or occupational training program, the student's choice of the TOPS Tech Award will be irrevocable.

E. - G.2. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 17:959 (October 1991), amended LR 22:338 (May 1996), LR 23:1648 (December 1997), repromulgated LR 24:632 (April 1998), amended LR 24:1902 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:67 (January 2000).

**§705. Maintaining Eligibility**

A. - A.7. ...

8. maintain Steady Academic Progress as defined in §301.

A.9. - A.9.b. ...

B. Students failing to meet the requirements listed in §705.A.8 or §705.A.9.a or b may have their tuition awards reinstated upon the lifting of academic probation and/or attainment of the required GPA, if the period of ineligibility did not persist for more than two years from the date of loss of eligibility. Students who fail to meet the continuation requirements of §705.a.9.b., but who meet the continuation requirements of §705.A.9.a., shall no longer be eligible for the stipend authorized for the Performance and Honors Awards, but shall continue to receive the award amount for the Opportunity Award. To be reinstated, the student must request reinstatement for the semester following the lifting of academic probation and/or the achievement of the required GPA by submitting a written request to the Office of Student Financial Assistance, Attention: Scholarship and Grant Division, and enclosing a certified original transcript from the school attended. Students who are reinstated to a Performance or Honors Award are no longer eligible to receive the annual stipends that normally accompany these awards.

C. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 17:959 (October 1991), amended LR 22:338 (May 1996), LR 23:1648 (December 1997), repromulgated LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999); LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000).

**Chapter 8. TOPS-TECH Award**

**§803. Establishing Eligibility**

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

1. be a U.S. citizen and be registered with the Selective Service, if required, unless the institutional Financial Aid Officer determines that failure to register was not willful, provided however, that a student who is not a citizen of the United States but who is eligible to apply for such citizenship shall be deemed to satisfy the citizenship requirement, if within sixty (60) days after the date the student attains the age of majority, the student applies to become a citizen of the United States and obtains such citizenship within one year after the date of the application for citizenship. Those students who are eligible for U.S. citizenship and who otherwise qualify for a TOPS award, will continue to satisfy the citizenship requirements for a TOPS award for one year after the date of the student's application for citizenship, at which time, if the student has not provided proof of U.S. citizenship to the Office of Student Financial Assistance, the student's TOPS award will

be suspended until such time as proof of citizenship is provided;

A.2. - 11. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:1898 (October 1998), amended LR 24:2237 (December 1998), LR 26:67 (January 2000).

### **§805. Maintaining Eligibility**

A. - A.7. ...

8. maintain Steady Academic Progress as defined in §301.

A.9. ...

B. Students failing to meet the requirements listed in §805.A.8 and 9 may have their tuition awards reinstated upon achieving Steady Academic Progress, as defined in §301, and the attainment of the required grade point average, if the period of ineligibility did not persist for more than one year from the date of loss of eligibility

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) LR 25:1091 (June 1999), LR 26:68 (January 2000).

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

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

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

1. be a U.S. citizen and be registered with the Selective Service, if required, unless the institutional Financial Aid Officer determines that failure to register was not willful, provided however, that a student who is not a citizen of the United States but who is eligible to apply for such citizenship shall be deemed to satisfy the citizenship requirement, if within sixty (60) days after the date the student attains the age of majority, the student applies to become a citizen of the United States and obtains such citizenship within one year after the date of the application for citizenship. Those students who are eligible for U.S. citizenship and who otherwise qualify for a TOPS award, will continue to satisfy the citizenship requirements for a TOPS award for one year after the date of the student's application for citizenship, at which time, if the student has not provided proof of U.S. citizenship to the Office of Student Financial Assistance, the student's TOPS award will be suspended until such time as proof of citizenship is provided.

A.2. - 9. ...

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 23:1650 (December 1997), amended LR 24:637 (April 1998), amended LR 24:1906 (October 1998), LR 26:68 (January 2000).

#### **§907. Maintaining Eligibility**

A. - A.3. ...

4. maintain Steady Academic Progress as defined in §301:

A.5. - 9. ...

B. Recipients who do not maintain eligibility under the provisions of §907.A.3 and 4, may be reinstated upon attainment of the required GPA and achieving the GPA

required for Steady Academic Progress, as defined in §301, provided the period of ineligibility did not exceed two years.

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 23:1650 (December 1997), amended LR 24:638 (April 1998), LR 24:1907 (October 1998), LR 25:1092 (June 1999), LR 26:68 (January 2000).

### **Chapter 17. Responsibilities of High Schools, School Boards, Special School Governing Boards, the Louisiana Department of Education and LASFAC on Behalf of Eligible Non-Louisiana High Schools**

#### **§1701. Eligibility of Graduates Based Upon the High School Attended**

A. - A.1. ...

2. Approved Nonpublic High Schools - nonpublic high schools approved by the Louisiana Board of Elementary and Secondary Education (BESE) pursuant to R.S. 17:11 which meet the standards required by BESE for students of the school to be eligible to receive from the state the benefit of appropriations for such items as transportation, textbooks, and administrative cost reimbursement. The approvals by BESE may be provisional or probational approvals.

A.3. - A.3.d. ...

4. Out-of-State High Schools

a. All other public or non-public high schools located in one of the United States or territories of the United States, other than Louisiana, which have been approved by the state or territory's chief school officer as listed in the Louisiana Department of Education Bulletin 1462, or by the public body which is that state's or territory's equivalent of the Louisiana Board of Elementary and Secondary Education (BESE), or which high school has been approved by the Southern Association of Colleges and Schools Commission on Secondary and Middle Schools and can demonstrate that it meets the standards adopted by BESE for approval of nonpublic schools of Louisiana as set forth in §1701.A.2, above, and those high schools located in foreign countries which have been authorized or approved by a Department in the Executive Branch of the United States government to teach the dependents of members of the U.S. Armed Forces stationed abroad;

A.4.a.i. - B. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 17: 959 (October 1991), amended LR 22:338 (May 1996), repromulgated LR 24:642 (April 1998), amended LR 24:1911 (October 1998), LR 25:849 (May 1999), LR 26:68 (January 2000).

#### **Chapter 21. Miscellaneous Provisions and Exceptions** **§2101. Academic Suspension of Awards and Reinstatement**

A. Students denied an award for their failure to maintain the required cumulative grade point average or for their failure to maintain Steady Academic Progress, as defined in §301, may be reinstated upon attainment of the required cumulative grade point average, provided that the period of ineligibility did not persist for more than two years from the date of loss of eligibility.

B. Students whose TOPS Performance and Honors Awards are reinstated are ineligible for annual stipends.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, 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 17:959 (October 1991), amended LR 22:338 (May 1996), repromulgated LR 24:646 (April 1998), amended LR 24:1915 (October 1998), LR 26:68 (January 2000).

Jack L. Guinn  
Executive Director

0001#015

## RULE

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

Tuition Opportunity Program for Students  
(TOPS) Teacher Award  
(LAC 28:IV.901, 909, 911)

The Louisiana Student Financial Assistance Commission (LASFAC) hereby adopts the following.

#### Title 28

#### EDUCATION

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

#### Chapter 9. TOPS Teacher Award

#### §901. General Provisions

A. ...

B. Description, History and Purpose. The Tuition Opportunity Program for Students (TOPS) Teacher Award:

1. annually provides approximately 90 competitively awarded educational loans to residents of Louisiana who commit to teach at the elementary or secondary school level in Louisiana. When the recipient teaches at an approved school in Louisiana, the loans are forgiven in the ratio of one year of loan forgiveness for each year of teacher, or two years of loan forgiveness for each year of teaching in an elementary or secondary school which is located in an economically disadvantaged region of the state as defined by the U.S. Department of Education;

B.2. - C.6. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:638 (April 1998), amended LR 24:1907 (October 1998), LR 26:69 (January 2000).

#### §909. Completion of Promissory Note and Acceptance of Award

Prior to receiving an award, the recipient must agree to the terms and conditions contained in the TOPS Teacher Award Program Promissory Note by completing the form and returning it to LASFAC by the specified deadline. The promissory note obligates the recipient to teach one year for each year of funding received; or, if teaching in a school located in an *economically disadvantaged region* of the state, as defined by the U.S. Department of Education, teach one year for every two years of funding received, or repay

the funds received, plus accrued interest and any collection costs incurred.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of the Student Financial Assistance, LR 24:638 (April 1998), amended LR 24:1907 (October 1998), LR 26:69 (January 2000).

#### §911. Discharge of Obligation

A. - B.1. ...

2. each year of full-time service as a teacher will fulfill an equivalent period of funding. However, if teaching in an elementary of secondary school which is located in an economically disadvantaged region of the state, as defined by the U.S. Department of Education, one year of teaching will fulfill two years of funding;

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

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:638 (April 1998), amended LR 24:1907 (October 1998), LR 26:69 (January 2000).

Jack L. Guinn  
Executive Director

0001#013

## RULE

### Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Chemical Accident Prevention  
(LAC 33:III.5901) (AQ196)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality regulations, LAC 33:III.5901 (Log #AQ196).

Act 839 of the 1999 Regular Session enacted R.S. 30:2063(K), which exempts storers of liquefied petroleum gas from regulation by the department for purposes of the chemical accident prevention program. This rule will exempt from the chemical accident prevention program, storers of liquefied petroleum gas whose facilities are permitted through or inspected by the Louisiana Liquefied Petroleum Gas Commission of the Department of Public Safety and Corrections, and storers of liquefied petroleum gas who use such gas as a fuel in an agricultural process. The basis and rationale for this rule are to reflect this exemption made by Act 839 of the 1999 Regular Session of the Louisiana Legislature.

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

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

**Part III. Air**

**Chapter 59. Chemical Accident Prevention and  
Minimization of Consequences**

**Subchapter A. General Provisions**

**§5901. Incorporation by Reference of Federal  
Regulations**

\* \* \*

[See Prior Text in A-C.5]

6. In 40 CFR 68.130 the list of substances is modified to read, "Storers of liquefied petroleum gas whose facilities are permitted through or inspected by the Louisiana Liquefied Petroleum Gas Commission of the Department of Public Safety and Corrections or storers of liquefied petroleum gas who use such gas as a fuel in an agricultural process are not subject to the provisions of this Chapter."

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000).

James H. Brent, Ph.D.  
Assistant Secretary

0001#058

**RULE**

**Office of the Governor  
Office of Elderly Affairs**

Area Agencies on Aging's Policies  
(LAC 4:VII.1121-1143)

In accordance with Revised Statutes 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) hereby amends the GOEA Policy Manual effective January 20, 2000. The purpose of the proposed rule change is to update existing policies governing area agencies on aging (AAAs) in Louisiana. The Federal Older Americans Act of 1965, as amended, (OAA) requires GOEA, as the State agency on aging, to divide the State into planning and service areas (PSAs) and designate an AAA for each. The AAAs receive federal and state funds based upon a formula approved by the U.S. Administration on Aging. OAA funds are awarded to AAAs for the purpose of assisting AAAs to develop or enhance comprehensive and coordinated community based service systems for providing all necessary supportive services, including nutrition services, for persons age 60 and over throughout the planning and service area. Except where a waiver is granted by the State agency, AAAs must award funds for direct services by contract to community services provider agencies and organizations. This rule complies with Public Law 89-73 and R.S. 46:932. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 4**  
**ADMINISTRATION**

**Part VII. Governor's Office**

**Chapter 11. Elderly Affairs**

**§1121. Definitions**

*Administration on Aging (AoA)* an agency of the U.S. Department of Health and Human Services, Office of Human Development Services. It is the Federal focal point and advocate for older persons and their concerns.

*Area Agency on Aging (AAA)* an agency designated by the State agency on aging to develop and administer the area plan for a comprehensive and coordinated system of services for older persons in a planning and service area.

*Area Plan* the application submitted by an AAA to receive Older Americans Act funds. Older Americans Act funds can be expended only under an area plan that has been approved by the State agency on aging.

*Assistive Technology* technology, engineering methodologies, or scientific principles appropriate to meet the needs of, and address the barriers confronted by, older individuals with functional limitations.

*Comprehensive and Coordinated System of Services* a system for providing all necessary supportive services, including nutrition services, in a manner designed to:

1. facilitate accessibility to, and utilization of, all supportive services and nutrition services provided within the geographic area served by such systems by any public or private agency or organization;
2. develop and make the most efficient use of supportive services and nutrition services in meeting the needs of older individuals;
3. use available resources efficiently and with a minimum of duplication; and
4. encourage and assist public and private entities that have unrealized potential for meeting the service needs of older individuals to assist the older individuals on a voluntary basis.

*Contract* an award of financial assistance by the Governor's Office of Elderly Affairs to an eligible recipient.

*DHHS* the United States Department of Health and Human Services.

*Direct Service* any activity performed to provide services directly to an individual older person by the staff of a service provider or an area agency.

*Director* the director of the Governor's Office of Elderly Affairs.

*Disability* except when such term is used in the phrase "severe disability," "developmental disabilities," "physical or mental disability," "physical and mental disabilities," or "physical disabilities," means a disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitations in 1 or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning, and emotional adjustment.

*Governor's Office of Elderly Affairs (GOEA)* the focal point on aging for the State of Louisiana, also referred to as

the State Unit on Aging (SUA), "State agency on aging," or "State Agency."

*Greatest Economic Need* the need resulting from an income level at or below the official poverty guideline (as defined each year by the Office of Management and Budget and adjusted by the Secretary of DHHS in accordance with Subsection 673(2) of the Community Services Block Grant Act [42 U.S.C. 9902 (2)].

*Greatest Social Need* the need caused by noneconomic factors, which include:

1. physical and mental disabilities;
2. language barriers; and
3. cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that:
  - a. restricts the ability of an individual to perform normal daily tasks; or
  - b. threatens the capacity of the individual to live independently.

*Information and Assistance* a service for older individuals that:

1. provides the individuals with current information on opportunities and services available to the individuals within their communities, including information relating to assistive technology;
2. assesses the problems and capacities of the individuals;
3. links the individuals to the opportunities and services that are available; and
4. to the maximum extent practicable, ensures that the individuals receive the services needed, and are aware of the opportunities available, by establishing appropriate follow-up procedures.

*Low-Income Minority* a person whose income is below the official poverty guideline (as defined each year by the Office of Management and Budget and adjusted by the Secretary of DHHS in accordance with Subsection 673(2) of the Community Services Block Grant Act [42 U.S.C. 9902 (2)] and who is designated as African American, Not of Hispanic Origin; Hispanic; American Indian or Alaskan Native; or Asian American/Pacific Islander.

*Minority* minority older persons are confined to the following designations:

*African American, Not of Hispanic Origin* a person having origins in any of the black racial groups of Africa.

*American Indian or Alaskan Native* a person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

*Asian American/Pacific Islander* a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, Samoa and the Hawaiian islands.

*Hispanic* a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

*Native Americans* American Indians, Alaskan Natives, and Native Hawaiians.

*Older Americans Act* (42 United States Code Section 3001 et seq.) federal legislation, first passed in 1965, that authorizes grants to states for programs and services for the elderly.

*Outreach* interventions initiated by an agency or organization for the purpose of identifying potential clients and encouraging their use of existing services and benefits.

*Planning and Service Area (PSA)* a geographic area of the state designated by the State Agency for the purpose of planning, development, delivery, and overall administration of services under an area plan.

*Service Provider* an entity awarded a subcontract from an area agency to provide services under the area plan.

*Severe Disability* a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that:

1. is likely to continue indefinitely; and
2. results in substantial functional limitation in 3 or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning, and emotional adjustment.

*State Agency on Aging* the single State agency designated to develop and administer the state plan on aging and to be the focal point on aging in the state (also referred to as the "state unit on aging" (SUA) or "State Agency"). The Governor's Office of Elderly Affairs (GOEA) is the State agency for Louisiana.

*Subcontract* an award of financial assistance by an AAA to a service provider.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 305(a)(2)(A).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 26:70 (January 2000).

### **§1123. Purpose of the Area Agency on Aging**

A. Area Agencies on Aging (AAAs) receive funds from the State agency on aging to plan, develop, coordinate and arrange for services in their respective planning and service areas (PSAs). As advocates, AAAs use Older Americans Act (OAA) funds to leverage state and local resources to expand and improve services. AAA's contract with public or private groups to provide services paid for using OAA funds. In some cases, the AAA may act as the service provider.

B. The AAA shall be the leader relative to all aging issues on behalf of all older persons in the PSA. This means the AAA shall carry out a wide range of functions related to advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, each community in the PSA. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

C. A comprehensive and coordinated community based system described in §1123.B shall:

1. have a visible focal point of contact where anyone can go or call for help, information or referral on any aging issue;
2. provide a range of options;
3. assure that these options are readily accessible to all older persons - the independent, semi-dependent and totally dependent - no matter what their income;
4. include a commitment of public, private, voluntary and personal resources committed to supporting the system;

5. involve collaborative decision-making among public, private, voluntary, religious and fraternal organizations and older people in the community;
6. offer special help or targeted resources for the most vulnerable older persons, those in danger of losing their independence;
7. provide effective referral from agency to agency to assure that information or assistance is received, no matter how or where contact is made in the community;
8. evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;
9. have a unique character which is tailored to the specific nature of the community; and
10. be directed by leaders in the community who have the respect, capacity and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change and plan community resources for the present and for the future.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 302(l).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 26:71 (January 2000).

### **§1125. Area Agency on Aging Standards**

#### **A. Planning**

1. The Area Agency on Aging (AAA) shall determine its objectives systematically after making a finding of need and determination of priorities within the PSA.
2. The AAA shall establish a mechanism to ensure that objectives are monitored and accomplished as set forth in the area plan.
3. Area agencies shall install a workable system for ongoing data collection in the PSA.
4. Area agencies shall implement a workable system for determining the needs of older persons within the PSA.
5. Area agencies shall establish a mechanism for determining and analyzing on an ongoing basis the existing services and resources available in the PSA to meet the needs of older persons and the extent to which such resources meet identified needs.

#### **B. Leadership/Advocacy**

1. The AAA shall act as the focal point in the PSA for activities which promote comprehensive and coordinated services for older persons.
2. The AAA shall operate a public information program in the PSA focusing on needs and concerns of seniors in the PSA.

#### **C. Pooling/Coordination**

1. The AAA shall establish linkages with public and private agencies in the PSA for the purpose of fostering comprehensive and coordinated services to older persons.
2. The AAA shall effect joint program agreements with other agencies in the PSA.
3. The AAA shall identify and tap potential resources to be directed toward inaugurating, expanding or improving services to older persons.

#### **D. Monitoring, Assessment and Provision of Technical Assistance**

1. The AAA shall develop and employ a mechanism for regularly monitoring subcontracts under the area plan.

2. The AAA shall develop and implement systematic procedures for regular assessments of subcontracts under the area plan.

3. The AAA shall develop and implement a plan for providing technical assistance to subcontractors under the area plan and to other organizations in the PSA concerned with the needs of older persons.

#### **E. Contracts Management**

1. The AAA shall develop and issue standardized application kits and procedures for applications for funds under the Area Plan.

2. The AAA shall develop standardized procedures and criteria for review of applications for funds under the Area Plan.

3. Selection criteria and procedures for the award of subcontracts shall be published and disseminated to agencies applying for Title III funds.

4. The AAA shall maintain on file selection criteria and procedures used for the award of subcontracts.

5. The AAA shall consult with the advisory council before awarding subcontracts.

6. Where the AAA encounters delays in the review of proposals, applicants shall be notified.

7. The AAA shall establish and disseminate appeals procedures for subcontract proposals which are denied approval.

8. The AAA shall maintain documentation supporting all of its subcontracts.

9. Notifications of approval and disapproval of proposals shall be issued in writing and on a timely basis.

10. The AAA shall develop and implement procedures for amendments to subcontract awards.

11. Proposals of subcontractors which receive funds shall contain clearly defined objectives that are in keeping with those included in the approved area plan.

12. Subcontracts awarded shall define the relationship between the AAA and the subcontractor.

13. The AAA shall establish written procedures governing the management and operation of subcontracts which are in keeping with Federal and state laws, regulations, policies and procedures. The procedures shall be communicated to agencies conducting subcontracts under the area plan.

14. Agencies conducting subcontracts under the area plan shall meet the requirements for licensure, if required.

15. Where there are multi-lingual/cultural older persons in the PSA, the AAA shall assure that the staff of subcontractors include multi-lingual/cultural personnel.

16. The AAA shall obtain documented assurance that information about consumers of services is maintained confidentially by subcontractors.

17. The AAA shall obtain documented assurance that subcontractors coordinate their services with the existing information and assistance services.

18. The AAA shall require subcontractors to provide evidence that services are accessible to older persons.

#### **F. Fiscal Management**

1. The AAA shall establish and implement fiscal management procedures to assure effective operation of the AAA programs.

2. The AAA shall establish and implement a system to monitor financial expenditures of subcontracts under the area plan.

3. The AAA shall maintain an accounting system which is in keeping with sound accounting procedures.

4. The AAA procurement practices shall be in keeping with Federal, state and local practices.

5. Expenditures made under the area plan shall be in keeping with pertinent Federal, State and local policies.

6. AAA program and financial records shall be maintained in conformance with Federal and state regulations for reporting.

7. The AAA shall follow established property management policies and procedures.

8. The AAA shall have an internal audit plan which is in keeping with generally accepted auditing practices and Federal and state regulations.

G. Establishing or Maintaining Information and Assistance Services. The AAA shall establish or maintain information and assistance services in sufficient numbers to assure that all older persons in the PSA have reasonably convenient access to such services.

#### H. Outreach

1. The AAA will use outreach efforts that will:

a. identify individuals eligible for assistance under this Act, with special emphasis on:

i. older individuals residing in rural areas;

ii. older individuals with greatest economic need (with particular attention to low-income minority individuals);

iii. older individuals with greatest social need (with particular attention to low-income minority individuals);

iv. older individuals with severe disabilities;

v. older individuals with limited English-speaking ability; and

vi. older individuals with Alzheimer's disease or related disorders with neurological and organic brain dysfunction (and the caretakers of such individuals); and

b. inform the older individuals referred to in §1125.H.1.a.i-v, and the caretakers of such individuals, of the availability of such assistance.

2. The AAA shall conduct an annual evaluation of the effectiveness of outreach conducted under §1125.H.1.

3. If there is a significant population of older Native Americans in the PSA of the area agency (at least 25 per parish), the AAA shall conduct outreach activities to identify elder Native Americans in such area and shall inform such older Native Americans of the availability of assistance under the Older Americans Act.

#### I. Staff Development

1. The AAA shall establish and implement a plan which provides for in-service training for all staff.

2. The AAA shall establish and implement a plan which provides that the staff of the subcontractors under the area plan receive training.

J. Civil Rights. The AAA shall develop and implement a system to ensure that benefits under the Area Plan are provided in a non-discriminatory manner as required under Title VI of the Civil Rights Act of 1964.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 306(a)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 26:71 (January 2000).

### §1127. Area Agency on Aging Responsibilities

#### A. Advocacy Responsibilities:

1. to monitor, evaluate, and comment upon all policies, programs, hearings, and community actions which affect older persons;

2. to solicit comments from the public on the needs of older persons;

3. to represent the interests of older persons to public officials, and public and private agencies or organizations;

4. to consult with and support the State's long term care ombudsman program;

5. to coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for older persons;

6. to supply service providers under the area plan with copies of interagency agreements relative to services provided;

7. to facilitate the coordination of community-based, long term care services designed to retain individuals in their homes, and designed to emphasize the development of client-centered case management systems as a component of such services;

8. to identify the public and private nonprofit entities involved in the prevention, identification, and treatment of the abuse, neglect, and exploitation of older individuals, and based on such identification, determine the extent to which the need for appropriate services for such individuals is unmet; and

9. to ensure that case management is provided in a consistent manner throughout the PSA.

#### B. General Planning and Management Responsibilities:

1. to develop and administer an area plan for a comprehensive and coordinated service delivery system in the PSA, in compliance with all applicable laws and regulations;

2. to assess the kinds and levels of services needed by older persons in the PSA, and the effectiveness of the use of resources in meeting these needs;

3. to enter into contracts to provide all services funded under the plan, except as provided in Section 307(a)(10) of the Older Americans Act;

4. to provide technical assistance, monitor and evaluate the performance of all service providers under the plan;

5. to coordinate the administration of its plan with the federal programs specified in Section 203(b) of the Older Americans Act, and with other federal, state, and local resources in order to develop the comprehensive and coordinated service system required by Section 306(a)(1) of the Older American's Act;

6. to conduct periodic evaluations of activities carried out under the area plan;

7. to establish an advisory council as required by Section 306(a)(6)(F) of the Older Americans Act to advise continuously the AAA on all matters relating to the development of the plan, the administration of the plan and operations conducted under the plan;

8. to give preference in the delivery of services under the area plan to older persons with the greatest economic and/or social need, as defined in Section 305(d)(2) of the Older Americans Act, with particular attention to low-income minority individuals;

9. to assure that older persons in the planning and service area have access to information and referral services;

10. to provide adequate and effective opportunities for older persons to express their views to the area agency on policy development and program implementation under the plan;

11. to identify older persons and inform them of the availability of services under the plan. These outreach efforts should have special emphasis on the rural elderly and the isolated urban elderly, and on those with greatest economic and/or social need;

12. to seek to involve the private bar in legal assistance activities;

13. to designate, where feasible, community focal points as provided in Section 306(a)(3) of the Older Americans Act;

14. to plan appropriate programs to meet identified needs of the elderly in the PSA. This includes:

a. determining which services will be funded and at what level;

b. identifying client target groups which will receive priority, in general and for specific services;

c. setting standards for service delivery;

d. developing a case management system to be used by service providers; and

15. to develop and maintain on file for review:

a. standards for use in the delivery of services;

b. a description of the interrelation among service providers funded by the AAA; and

c. methods for selecting persons with the greatest social and economic need to receive services;

16. to provide an opportunity for a hearing and issue a written decision to service providers or applicants to provide services whose application under an area plan is denied or whose contract is terminated or not renewed, except as provided in 45 CFR Part 74, Subpart M.

#### C. Eldercare/Case Management

1. AAAs may provide eldercare, as specified in LAC 4:VII.1241.

2. AAAs may provide one or more component of case management for a private entity, as specified in LAC 4:VII.1241.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 306 and 45 CFR 1321.61(a)(4).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 17:600 (June 1991), LR 18:1376 (December 1992), LR 26:72 (January 2000).

### §1129. Area Agency on Aging Governing Body

#### A. Authority and Responsibilities

1. A governing body shall be responsible for all AAA activities, including the expenditure of funds awarded by GOEA.

2. The AAA governing body has the authority to:

a. appoint the director of the AAA;

b. determine personnel, organization, fiscal and program procedures subject to GOEA policies;

c. determine overall program plans and priorities for the AAA, including provisions for evaluating performance;

d. grant final approval on program proposals and budgets of service providers under the area plan;

e. assure compliance by all subcontractors with all rules, regulations, and GOEA policies;

f. supervise the extent and the quality of the participation of the elderly in the programs of the AAA and its subcontractors; and

g. determine the rules and procedures of the governing body subject to GOEA policies.

3. The governing body is responsible for securing financial resources beyond those allocated by GOEA.

4. Members of the governing body shall avoid conflicts between their personal interests and the interests of the AAA.

a. Conflicts of interest include situations wherein a member of the governing body:

i. is involved in a AAA decision or action regarding another entity in which the member or a member of his/her immediate family has a financial interest, is an employee, is a director or is a consultant; or

ii. discloses information relating to the business of the AAA which can be used by another entity to the detriment of the AAA.

b. Immediate family is defined as follows: Husband, wife, father, mother, sister, brother, son, daughter, grandmother, grandfather, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law.

c. Other entities include any organization or individual which does business or seeks to do business with the AAA or competes with the AAA.

4. If a member of the AAA governing body is aware of any personal interest related to an issue that exists or is under consideration by the AAA, the individual shall immediately and prior to the discussion about or action on the issue:

a. disclose the existence of all personal interests; and

b. abstain from voting and/or attempting to influence the decision.

#### B. Composition

1. Former AAA board members shall not be employed as paid agency staff of the same area agency for a period of two (2) years immediately following separation from the governing body.

2. Former AAA staff members shall not serve on the governing body of directors of the same area agency for a period of two (2) years immediately following separation from employment, except where the governing body is composed of elected public officials (e.g., parish council or police jury).

AUTHORITY NOTE: Promulgated in accordance with OAA Section 305(c)(4), Section 307(a)(11) and R.S. 43:1119.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 17:600 (June 1991), LR 26:74 (January 2000).

### §1131. Area Agency on Aging Advisory Council

#### A. Functions of the Advisory Council

1. The advisory council shall carry out advisory functions which further the AAA's mission of developing

and coordinating community-based systems of services for all older persons in the PSA.

2. The advisory council shall advise the AAA relative to:

- a. developing and administering the area plan;
- b. conducting public hearings;
- c. representing the interests of older persons; and
- d. reviewing and commenting on all community policies, programs, and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

3. The advisory council shall follow operational procedures established by the AAA governing body.

**B. Composition of the Area Agency Advisory Council**

1. The advisory council shall include individuals and representatives of community organizations who will help to enhance the leadership role of the AAA in developing community-based systems of services.

2. The advisory council shall be made up of:

- a. more than 50 percent older persons, including minority individuals who are participants or who are eligible to participate in Older Americans Act Title III programs;
- b. representatives of older persons;
- c. representatives of health care provider organizations, including providers of veterans' health care (if appropriate);
- d. representatives of supportive services providers organizations;
- e. persons with leadership experience in the private and voluntary sectors;
- f. local elected officials; and
- g. the general public.

3. Members of the AAA governing body shall not serve on the advisory council.

**C. Review by Advisory Council.** The AAA shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

**AUTHORITY NOTE:** Promulgated in accordance with OAA Sec. 306 (a)(6)(F) and 45 CFR 1321.57.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor's Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 17:599 (June 1991), LR 26:74 (January 2000).

**§1133. Area Plan**

**A. Purpose of the Area Plan.** The area plan is the application submitted by an area agency to the State Agency in order to receive funds. The area plan contains provisions required by the Older Americans Act and its implementing regulations and the Governor's Office of Elderly Affairs. It includes commitments that the area agency will administer activities so funded in accordance with all requirements. The area plan also contains a detailed statement of the manner in which the area agency is developing a comprehensive and coordinated system throughout the planning and service area for all allowable services. An area agency may receive contracts and enter into subcontracts under the Older Americans Act only under an approved area plan.

**B. Duration and Format of the Area Plan.** The AAA must submit to GOEA an area plan for its PSA for a two, three, or four year period with such annual adjustments as may be necessary. The area plan shall be based upon a uniform format developed by GOEA for area plans within the state.

**C. Content of the Area Plan**

1. The area plan will specify:

- a. conditions of older persons in the PSA;
- b. current system of service delivery based on the most recently available data;
- c. an assessment of current capacity in the PSA to perform service systems development activities;
- d. the organization of the AAA;
- e. composition and functions of the AAA advisory council;
- f. goals and objectives for the conduct of the AAA functions described in this Section, and for the development and delivery of services for the aging. Service delivery objectives shall include, for each service, the projected numbers of persons to be served and standard units of service to be provided;
- g. financial plan, showing projected expenditures by source (federal, state, and local) and service;
- h. standard assurances for complying with applicable laws, regulations, and other directives; and
- i. The AAA's approach to, plans for, and/or current involvement in eldercare, as defined in LAC 4:VII.1241.

2. Whenever the AAA plans to provide eldercare and/or to provide case management for a private entity, the area plan, or its amendment, shall include the provisions specified in LAC 4:VII.1241.D.

3. Each area plan shall designate, where feasible, a focal point for comprehensive service delivery in each community, giving special consideration to designating multipurpose senior centers (including multipurpose senior centers operated by organizations that have a proven record of providing services to older individuals), that:

- a. were officially designated as community action agencies or community action programs under Subsection 210 of the Economic Opportunity Act of 1964 (42 U.S.C. 2790) for fiscal year 1981, and did not lose the designation as a result of failure to comply with such Act; or
- b. came into existence during fiscal year 1982 as direct successors in interest to such community action agencies or community action programs; and
- c. meet the requirements under Subsection 675(c)(3) of the Community Services Block Grant Act (42 U.S.C. 9904(c)(3)).

**D. Development and Amendment of the Area Plan**

1. Area plans shall be developed for a two, three, or four year period with annual updates and amendments as necessary. The plan's resource allocation, including allotments for services, shall be prepared annually and as available allotments change. The format of the area plan and instructions for its completion shall be prescribed by the Governor's Office of Elderly Affairs and issued separately.

2. Prior to the adoption of the content areas described in §1133.C of this Manual, the area agency must conduct public hearings in accordance with a schedule established by the advisory council. The area agency must give at least fourteen days' notice to older persons, public officials, and other interested parties of the times, dates and locations of the public hearings in each parish. The area agency shall prepare public hearing materials to provide information and serve as a basis for comments, recommendations and other input to the development of the area plan.

3. Public hearings on plan amendments will only include information relating to the part of the plan being amended.

4. In accordance with the state public meetings law, LA R.S. 42:4.1 et seq., the area agency, in holding public hearings, must give at least fourteen days' notice to older persons in each parish, including the advisory council, public officials, and other interested parties of the times, dates, and locations of the public hearing(s) which will be held. Public hearings must be held at a time and location which permit older persons, public officials, and other interested parties a reasonable opportunity to participate. The area agency must submit the area plan and amendments for review and comment to the advisory council.

#### E. Review and Approval of the Area Plan and Amendments

1. The completed area plan will be submitted to GOEA for review and approval by a date specified by GOEA. The resource allocation plan describing the projected costs by source of funds and service, will be submitted annually as prescribed by GOEA.

2. The area plan must be amended if:

a. a new or amended state or federal statute or regulation requires a new provision, or conflicts with any existing plan provisions;

b. a U.S. or Louisiana Supreme Court decision changes the interpretation of a statute or regulation;

c. the AAA proposes to add, substantially modify, or delete any area plan objective(s); or

d. GOEA specifies additional circumstances under which area plan amendments are required.

3. Amendments must be documented on those area plan exhibits affected by the change and submitted to the State Agency with a written rationale. Such proposed changes may not be executed until approved by GOEA.

4. The State Agency shall approve an area plan which meets the requirements of this manual and the area plan format and guidelines issued.

5. A plan which is disapproved by the State Agency shall be returned to the AAA along with a written reason for disapproval. At its discretion, the State Agency may request that specific changes be made before resubmittal.

6. The AAA may appeal disapproval of its area plan or amendment in accordance with GOEA hearings and appeals procedures.

F. Management Plan. As part of a management plan the AAA will develop a work plan for attaining the objectives outlined in the area plan. The work plan shall be kept on file for review at the AAA office.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 306, and Section 307.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 17:57 (January 1991), LR 18: 1376 (December 1992), LR 26:75 (January 2000).

### **§1135. Program Administration**

A. Contract Development. The area agency is responsible for the translation of program designs into service delivery project proposals to be developed and carried out by service providers. In carrying out its service procurement responsibilities, the area agency shall adhere to Governor's Office of Elderly Affairs procurement procedures issued annually.

B. Capacity Building, Training and Technical Assistance. The area agency is responsible for the provision of consultation, training, and support to staff of service providers and other organizations to strengthen their administrative and service delivery capability.

#### C. Monitoring and Assessment of Service Providers

1. The area agency on aging shall monitor and assess all funded services provided under the area plan. Monitoring and assessment of service providers shall be conducted with documentation maintained on file at the area agency on aging office. Self-assessments shall be conducted where direct delivery has been authorized by the Governor's Office of Elderly Affairs. The purpose of these activities is to measure service delivery efficiency and effectiveness and to assure compliance with contractual agreements. Suggested corrective action outlined in the monitoring report shall be used as a tool for program planning and improvement. Personnel qualifications and staff utilization will be reviewed as part of this monitoring process.

2. Monitoring activities carried out by the area agency will be directed toward:

a. identifying performance problems as a basis for determining provider need for technical assistance and training;

b. measuring the provider's progress toward providing those services specified in the proposal, and placing an emphasis on older persons with the greatest social and economic need;

c. assuring compliance with applicable federal, state, and local law, regulations and other requirements; and

d. assuring cost-effective use of available resources for the elderly.

D. Program Evaluation. The area agency is responsible for evaluating programs for the aging, both those provided under the area plan and those offered by other organizations.

#### E. Contributions for Services Under the Area Plan

1. The area agency shall assure that agencies providing supportive and nutrition services under the area plan shall afford participants the opportunity to contribute to the costs of the services provided. The participants shall determine for themselves what they are able to contribute toward the cost of the service. No eligible person shall be denied a supportive or nutrition service because of his failure to contribute.

2. The area agency shall ensure that the methods of receiving contributions from individuals by the agencies providing supportive or nutrition services under the area plan shall be handled in such a manner as to insure confidentiality.

3. The area agency shall assure that all contributions will be used to expand the services of the provider, and that nutrition services providers must use all contributions to increase the number of meals served, and/or to facilitate access to such meals. Providers of supportive services must use all contributions to increase supportive services.

F. Confidentiality and Disclosure of Information. The area agency shall ensure that information about or obtained from an older person, in a form which identifies the person, shall not be disclosed without the individual's informed, written consent or that of his authorized representative.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 306 and Section 307(a)(13)(C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 26:76 (January 2000).

### **§1137. Services to Special Populations**

#### **A. Low-Income Minority Individuals**

1. The AAA shall include in each agreement made with a provider of any service under this title, a requirement that such provider will:

a. specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served by the provider;

b. to the maximum extent feasible, provide services to low-income minority individuals in accordance with their need for such services; and

c. meet specific objectives established by the AAA, for providing services to low-income minority individuals within the planning and service area.

2. The AAA shall set specific objectives for providing services to older individuals with greatest economic or social needs, include specific objectives for providing services to low-income minority individuals, and include proposed methods of carrying out the preference in the area plan.

3. The AAA shall include in each agreement made with a provider of any service under Title III of the Older Americans Act, a requirement that such provider will:

a. specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served by the provider;

b. to the maximum extent feasible, provide services to low-income minority individuals in accordance with their need for such services; and

c. meet specific objectives established by the AAA, for providing services to low-income minority individuals within the planning and service area.

4. The AAA will ensure that each activity undertaken by the agency, including planning, advocacy, and systems development, will include a focus on the needs of low-income minority older individuals.

**B. Native Americans.** The AAA will pursue activities to increase access by older individuals who are Native Americans to all aging programs and benefits provided by the agency, including programs and benefits under Title III of the Older Americans Act, if applicable.

**AUTHORITY NOTE:** Promulgated in accordance with OAA Section 307(a)(5) and 45 CFR 1321.39.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 26:77 (January 2000).

### **§1137. Repealed**

**AUTHORITY NOTE:** Promulgated in accordance with OAA Section 307(a)(5) and 45 CFR 1321.39.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 26:77 (January 2000).

### **§1139. State Agency Approval of Area Agency on Aging Contracts**

The AAA must submit all proposed subcontracts with profit making organizations under the area plan to the State Agency for prior approval.

**AUTHORITY NOTE:** Promulgated in accordance with OAA Section 212 and 45 CFR 1321.55.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 26:77 (January 2000).

### **§1141. Priority Services**

#### **A. General Rules**

1. The AAA must allot the following minimum percentages of their funding under Title III-B of the Older Americans Act for the designated service categories:

a. services associated with access to services (transportation, outreach, information and assistance, and case management services): thirty percent;

b. in-home services (homemaker and home health aides, visiting and telephone reassurance, chore maintenance, and supportive services for families of elderly victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction): fifteen percent; and

c. legal assistance: 5 percent.

2. GOEA shall waive the requirement in §1141.A.1 of this manual for any category of services described in such Paragraph if the AAA demonstrates to GOEA that services being furnished for such category in the area are sufficient to meet the need for such services in such area.

3. If a waiver is issued by the Governor's Office of Elderly Affairs for any category of priority service, the area agency must assure that the minimum percentage of its supportive services funds are allocated to the remaining priority services categories.

#### **B. Waiver Requirements**

1. Before an AAA requests a waiver under §1141.A.2 of this manual, the AAA shall conduct a timely public hearing in accordance with the provisions of this Paragraph. The AAA requesting a waiver shall notify all interested parties in the area of the public hearing and furnish the interested parties with an opportunity to testify.

2. The AAA shall prepare a record of the public hearing conducted pursuant to §1141.B.1 of this manual and shall furnish the record of the public hearing with the request for a waiver made to GOEA under §1141.A.2 of this manual.

**AUTHORITY NOTE:** Promulgated in accordance with OAA Section 306(a)(2), Section 306(b)(2), and Section 307(a)(12).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), amended LR 18:610 (June 1992), LR 26:77 (January 2000).

### **§1143. Service Procurement**

**A. General Rules for Services Funded under Title III of the Older Americans Act**

1. AAAs use procurement contracts or subcontracts with service providers to provide all Title III services under their respective approved area plans except as provided in §1143.B of this manual.

2. GOEA shall be alert to organizational conflicts of interest or non-competitive practices among area agencies that may restrict or eliminate competition.

3. AAAs shall follow the service procurement guidance issued by GOEA.

4. GOEA shall evaluate AAA applications to provide direct services in order to determine whether direct delivery of such service(s) by an AAA using its own employees is necessary to assure an adequate supply of the service(s), or whether such service(s) of comparable quality can be provided more economically by the AAA.

5. In order to ensure objective contractor performance and eliminate unfair competitive advantage, GOEA shall review the documentation required in the service

procurement guidance, including, but not limited to, standards, specifications, solicitations for proposals (SFPs) and/or evaluation criteria when deciding whether to authorize direct delivery of service(s) by an AAA.

#### B. Criteria for Direct Delivery of Services by an Area Agency

1. Area agencies may directly deliver services determined by GOEA to be directly related to area agency on aging administrative functions. GOEA has defined these services as: Case Management, Information and Assistance, and Outreach.

2. For services not directly related to area agency on aging administrative functions, GOEA, after exploring alternatives, may authorize direct service delivery if the AAA:

a. demonstrates that it is necessary to directly deliver service(s) to ensure an adequate supply of the service; or

b. demonstrates that it can provide service(s) of comparable quality more economically than other providers.

3. GOEA's decision concerning AAA requests for authorization to provide direct services will be based on one of two tests: The Adequate Supply Test (when no proposals are received by the AAA in response to the SFP); or The More Economic Test Standard (when proposals are received).

#### C. Test Standards

##### 1. Adequate Supply Test Standard

a. The Adequate Supply Test will require area agencies to demonstrate that service(s) are either not offered or are only partially available in the PSA.

b. The Adequate Supply Test will be met when the AAA provides documentation that it has not received any proposals to deliver the service(s) in all or a portion of the PSA after the AAA has: 1) advertised the availability of funds; and 2) written to bona fide service providers, inviting them to submit proposals.

##### 2. More Economic Test Standard

a. The More Economic Test will require an AAA to demonstrate that service(s) of comparable quality will be provided by the AAA at a unit rate at least ten percent lower than the lowest responsible applicant's proposed unit rate.

b. The More Economic Test Standard will be met when the AAA's sealed Narrative Proposal substantiates that it meets the Service Delivery Standards in §1143.F of this manual in a manner comparable in quality to the lowest responsible applicant's proposal; and provides the service(s) at a unit rate which is at least ten percent lower than the lowest responsible applicant's proposed unit rate. Unit rate is defined as the total expenditure of funds budgeted for the service divided by the number of units of service to be delivered.

c. In applying the More Economic Test, GOEA shall utilize the criteria used by the AAA in the preliminary evaluation of proposals received from other potential providers.

#### D. Standard Procedures

1. For services where direct delivery authorization is not requested the AAA governing body shall:

a. solicit proposals for service delivery and awards of financial assistance under procurement contract;

b. evaluate proposals received; and

c. award procurement contract(s) or financial assistance under contract to best applicant(s).

2. For each service the AAA desires to provide directly, the AAA governing body shall:

a. solicit proposals for service delivery and awards of financial assistance under procurement contract;

b. conduct a preliminary evaluation of all proposals received; and

c. provide sufficient documentation to GOEA to enable the State Agency to make a determination of the necessity of direct service delivery by the AAA.

#### E. Service Delivery Standards

1. A person qualified by training and experience shall be designated to be responsible for the conduct of activities, including supervision of paraprofessional and volunteer staff.

2. There shall be adequate numbers of supervisory staff, trained and skilled in dealing with assessing the needs of older persons and assisting such persons to obtain needed services.

3. The service shall be provided in a timely manner to meet the individual needs of eligible participants.

4. There shall be an established system for follow-up on referrals.

5. There shall be an up-to-date file of community resources which will contribute to the well being of older persons.

6. Procedures shall be established for publicizing the service.

7. Linkages shall be planned with other services available under Title III Section 203 of the Older Americans Act.

8. There shall be a sound management system capable of furnishing timely and accurate fiscal and program reports.

9. There shall be a sufficient schedule of service delivery days. (minimum: 250 service delivery days per contract year)

10. Outreach shall be available to target older persons with the greatest social or economic need with particular attention to low-income minority individuals; older persons with severe disabilities; and older Native Americans [if there is a significant Native American population (at least 25 per parish) in the PSA], and rural elderly.

11. There shall be service delivery criteria for each service giving priority in the delivery of services to older individuals who are frail, homebound by reason of illness or incapacitating disability or otherwise isolated; and older individuals with the greatest social or economic need (with particular attention to low-income minority individuals).

12. There shall be a system established for the re-evaluation of clients receiving services.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(10), OMB Circular A-110.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:621 (June 1885), LR 11:1078 (November 1985), LR 16:503 (June 1990), amended LR 18:610 (June 1992), LR 26:77 (January 2000).

P.F. "Pete" Arceneaux, Jr.  
Executive Director

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## RULE

### Office of the Governor Office of Elderly Affairs

GOEA Policy Manual Revision  
(LAC 4:VII.1271-1275)

In accordance with Revised Statutes 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) hereby amends the GOEA Policy Manual effective January 20, 2000. The purpose of the proposed rule change is to update existing policies governing hearing procedures for: service providers or applicants to provide services whose application under an area plan is denied or whose contract is terminated or not renewed; persons filing a formal grievance with the Office of the State Ombudsman pursuant to LAC 4:VII.1229.L.3.b; any ombudsman against whom a grievance was filed, whenever either party disagrees with the decision rendered by the State Ombudsman; and any applicant for reimbursement of incurred medical expenses whose application is denied and who files an appeal in accordance with LAC 4:VII.1237.H.1. This rule complies with R.S. 46:932 and R.S. 40:2802.

#### Title 4

#### ADMINISTRATION

#### Part VII. Governor's Office

#### Chapter 11. Elderly Affairs

#### §1271. Hearing Procedures for Service Providers and Applicants

A. Purpose. The Governor's Office of Elderly Affairs (GOEA) shall provide an opportunity for a hearing and issue a written decision to service providers or applicants to provide services whose application under an area plan is denied or whose contract is terminated or not renewed.

B. Right to a Hearing. Any service provider or applicant to provide services whose application under an area plan is denied or whose contract is terminated or not renewed, except as provided in 45 CFR Part 74, Subpart M, may request a hearing by GOEA on such action after all hearing procedures of the area agency on aging (AAA) have been exhausted.

##### C. Request for Hearing

1. A petitioner must request the hearing from GOEA within 30 days following receipt of the AAA's final action letter.

2. The request for the hearing shall be in writing and must state with specificity all grounds upon which petitioner refuses the basis of the action. The notice must include:

- a. a copy of the AAA's action letter;
- b. the dates of all relevant actions;

c. the names of individuals and organizations involved in the action appealed;

d. a citation of any provision of the Older Americans Act or accompanying regulations believed to have been violated by the AAA in taking the action appealed; and

e. a certified copy of the resolution by which, or of minutes of the meeting at which, the petitioner's governing body authorized the appeal; and

f. designation of one or more persons to represent it during the appeal, both by majority vote of a quorum of the governing body.

##### D. Submission of Hearing

1. The AAA, upon written request from GOEA, shall furnish copies of the following documents to the GOEA:

a. the minutes of the meeting of the AAA's governing body at which the subject action was considered and taken;

b. the minutes of the meeting of the AAA's advisory council at which the subject action was considered and recommended;

c. area agency memoranda, staff reports, and evaluations relevant to the action appealed;

d. the criteria used in awarding the contract involved in the hearing; and

e. the petitioner's application for the contract involved in the hearing.

2. No additional evidence may be admitted on the hearing unless the director of GOEA requests it or schedules an evidentiary hearing under Subsection 1271.E.

##### E. Evidentiary Hearing

1. If the director of GOEA determines that a hearing involves a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, he/she may schedule a hearing to take testimony. The director shall provide all parties at least ten working days notice of the date, place, and time of the hearing. Said notice shall be sent by registered or certified mail, return receipt requested. The notice shall include a statement that with agreement of all affected parties, hearings may be conducted by telephone conference or other electronic means.

2. The director may serve as the hearing examiner, or may appoint an impartial hearing examiner to preside at the hearing. The hearing examiner shall have the powers described in Subsection 1267.F.

3. The rules of evidence described in Subsection 1267.G shall apply to an evidentiary hearing under this Section.

4. The hearing examiner shall make a record of the evidentiary hearing in accordance with Subsection 1267.M.

5. The rules pertaining to evidence, ex parte consultations, depositions, hearings and transcripts shall be as provided in Subsections G, H, I, J, and K of §1267, respectively.

##### F. Final Decision

1. The director shall decide all hearings under this rule but may direct a GOEA employee to make an initial review and recommend a decision.

2. The director shall decide the hearing solely on the basis of the record. The director shall not substitute his/her judgment for that of the AAA as to the weight of the evidence on matters committed to the AAA's discretion. The

director shall affirm the action heard unless it is unlawful, arbitrary, or not reasonably supported by substantial evidence in the record.

3. The director shall render a final decision on the hearing in writing within 120 days after receipt of the notice of appeal. The director shall send a copy of the final decision to each party by registered or certified mail, return receipt requested, within three days after it is rendered.

G. Rehearing. Procedures for rehearing and appeal shall be governed by R.S. 49:959 and 965.

H. Record. The record for the hearing under this rule shall consist of the material listed in Subsection 1267.M.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 307(a)(5).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 11:618 (June 1985), amended LR 11:1078 (November 1985), LR 26:79 (January 2000).

**§1273. Hearing Procedures for Persons Filing Grievances with the Office of the State Long Term Care Ombudsman**

A. Right to a Hearing. The Governor's Office of Elderly Affairs (GOEA) shall provide an opportunity for a hearing and issue a written decision to any person filing a formal grievance with the Office of the State Ombudsman pursuant to Section 1229.L.3.b. or to the ombudsman against whom the grievance was filed, whenever either party disagrees with the decision rendered by the State Ombudsman pursuant to LAC 4:VII.1229 L.3.f or L.5.b.iii.

**B. Request for Hearing**

1. A request for hearing must be received by GOEA within 30 days following petitioner's receipt of the notice of the State Ombudsman's decision.

2. A request for hearing must be in writing and must state with specificity the grounds upon which the State Ombudsman's decision is appealed. The request must include:

- a. the dates of all relevant actions;
- b. the names of individuals or organizations involved in the action;
- c. a specific statement of any laws or regulations believed to have been violated; and
- d. all grounds upon which petitioner refutes the State Ombudsman's decision.

**C. Notice of Hearing**

1. Upon receipt of a request for hearing, the director shall, within 10 working days, set a date for the hearing.

2. GOEA shall issue a written notice to the petitioner and other interested persons which shall include:

- a. a statement of time, date, exact physical location (to include street address and city), and nature of the hearing;
- b. a statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. a reference to the particular section of statutes, regulations, and rules involved;
- d. a short and plain statement of the reasons for the decision that is being appealed and the evidence on which the decision was based; and
- e. a statement that with agreement of all affected parties, hearings may be conducted by telephone conference or other electronic means.

3. Petitioner shall be given no less than 10 working days notice of the scheduled hearing. Notice shall be sent by registered or certified mail, return receipt requested.

**D. Hearing Examiner**

1. The director or his/her designated representative shall be the hearing examiner and preside at the hearing, subject to the provisions of R.S. 49:950 et seq. The hearing examiner shall have authority to administer oaths, rule on motions and the admissibility of evidence, to recess any hearing from time to time, and rule on such other procedural motions as may be presented by the State Ombudsman or the petitioner.

2. The hearing examiner shall conduct the hearing in accordance with the procedures outlined herein and render a fair decision. In rendering his/her decision, the hearing examiner shall consider:

- a. all information relevant to the complaint;
- b. the provision of Section 307 (a) (12) of the Older Americans Act which requires the State Ombudsman or his/her representatives to "investigate and resolve complaints made by or on behalf of older individuals who are residents of long term care facilities relating to action, inaction or decisions...which may adversely affect the health, safety, welfare or rights of such residents"; and
- c. R.S. 2010.4 (D), which states, "No representative of the Office of the State Ombudsman will be liable under State law for the good faith performance of official duties as defined by state and federal laws and regulations."

**E. Rules of Evidence**

1. The rules of evidence as applied in civil cases in the district courts of this state shall be followed. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Objection to evidentiary offers may be made and shall be noted in the record.

2. Documentary evidence may be received by the hearing examiner in the form of a copy or excerpt if the original is not readily available. On request, either party shall be given an opportunity to compare the copy with the original.

3. If a hearing will be expedited and the interests of parties will not be prejudiced substantially, any part of the evidence may be received in written form or the parties may stipulate as to facts or circumstances or summarize same.

4. Either party may conduct cross-examination required for a full and true disclosure of the facts.

5. Official notice may be taken by the hearing examiner of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of GOEA's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data; and afforded an opportunity to contest the material so noticed. The special skills or knowledge of GOEA and its staff may be utilized in evaluating the evidence.

6. Formal exceptions to rulings of the hearing examiner during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the hearing examiner, the action desired. When testimony is excluded by the hearing examiner, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review. The hearing examiner may ask such questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof.

F. Ex Parte Consultations. Communications between the hearing examiner and any party or interested person or his/her representative shall be governed by R.S. 49:950 et seq. the Louisiana Administrative Procedure Act.

G. Depositions and Subpoenas. The taking and use of depositions and the issuance of subpoenas shall be governed by R.S. 49:956 (5)-(8) of the Louisiana Administrative Procedure Act.

H. Hearing. The procedure to be followed for hearings held under §1273 shall be as provided in Subsection 1267.J.

I. Transcript. The rules governing transcripts for hearings held under §1273 shall be as provided in Subsection 1267.K.

J. Final Decision. All decisions shall be in writing and shall be rendered and acted upon by the director within 60 days of the close of the hearing. A copy of the decision shall be sent immediately to the applicant by registered or certified mail, return receipt requested. A copy of the decision shall also be sent to any other persons directly affected by the decision.

K. Rehearing and Appeal. Procedures for rehearings and appeals shall be governed by R.S. 49:959 and 965.

L. Record. The record in a hearing under this Section shall consist of the materials listed in Subsection 1267.M.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 1321.11 (a), published in the Federal Register/Vol. 53, No. 169/Wednesday, August 31, 1988.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 18:265 (March 1992), amended LR 26:80 (January 2000).

### **§1275. Hearing Procedures for Persons Filing Appeals in the Long Term Care Assistance Program**

A. Right to a Hearing. The Office of Elderly Affairs (GOEA) shall provide an opportunity for a hearing and issue a written decision to any applicant for reimbursement of incurred medical expenses whose application is denied and who files an appeal in accordance with LAC 4:VII.1237.H.1.

#### **B. Request for Hearing**

1. A request for hearing must be received by GOEA within 30 days following applicant's receipt of the written notification of adverse decision from the agency.

2. A request for hearing must be in writing and must state with specificity the grounds upon which the agency's decision is appealed. The request must include:

a. the basis upon which petitioner refutes the agency's decision (i.e., additional information or administrative error); and

b. a specific statement of the suspected administrative error; and/or

c. additional information which the agency should consider in rendering a decision, including, but not limited to the following:

i. dates of all relevant actions; and

ii. the names of individuals, agencies or organizations who may be able to substantiate the petitioner's claim.

#### **C. Administrative Review of Adverse Decision**

1. Upon receipt of a request for a hearing pursuant to Subsection 1275.B, the administrator of the Long Term Care Assistance program (the program) shall investigate the allegation stated in the request; consider the additional information provided by the petitioner; and issue a written decision within 30 days.

2. The written decision shall inform the petitioner of the findings of the investigation, the actions to be taken, if any, as a result of the investigation, and the provisions for appealing the decision to the director .

3. If the administrator of the program fails to respond or to act upon an appeal within 30 days, or if dissatisfied with the results of the Administrative Review, the petitioner may refer the request for a hearing to the director.

#### **D. Notice of Hearing**

1. Upon receipt of a request for hearing, the director shall, within 10 working days, set a date for the hearing.

2. GOEA shall issue a written notice to the petitioner and other interested persons which shall include:

a. a statement of time, date, location, and nature of the hearing;

b. a statement of the legal authority and jurisdiction under which the hearing is to be held;

c. a reference to the particular section of statutes, regulations, and rules involved;

d. a short and plain statement of the reasons for the decision that is being appealed and the evidence on which the decision was based; and

e. a statement that with agreement of all affected parties, hearings may be conducted by telephone conference or other electronic means.

3. Petitioner shall be given no less than 10 working days notice of the scheduled hearing. Notice shall be sent by registered or certified mail, return receipt requested.

#### **E. Hearing Examiner**

1. The director or his/her designated representative shall be the hearing examiner and preside at the hearing, subject to the provisions of R.S. 49:950 et seq. The hearing examiner shall have authority to administer oaths, rule on motions and the admissibility of evidence, to recess any hearing from time to time, and rule on such other procedural motions as may be presented by the administrator of the program or the petitioner.

2. The hearing examiner shall conduct the hearing in accordance with the procedures outlined herein and render a fair decision.

#### **F. Rules of Evidence**

1. In hearings, under these rules, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is a type

commonly relied upon by reasonably prudent persons in the conduct of their affairs. Objection to evidentiary offers may be made and shall be noted in the record.

2. Documentary evidence may be received by the hearing examiner in the form of a copy or excerpt if the original is not readily available. On request, either party shall be given an opportunity to compare the copy with the original.

3. If a hearing will be expedited and the interests of parties will not be prejudiced substantially, any part of the evidence may be received in written form or the parties may stipulate as to facts or circumstances or summarize same.

4. Either party may conduct cross-examination required for a full and true disclosure of the facts.

5. Official notice may be taken by the hearing examiner of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of GOEA's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data; and afforded an opportunity to contest the material so noticed. The special skills or knowledge of GOEA and its staff may be utilized in evaluating the evidence.

6. Formal exceptions to rulings of the hearing examiner during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the hearing examiner, the action desired. When testimony is excluded by the hearing examiner, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review. The hearing examiner may ask such questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof.

G. Ex Parte Consultations. Communications between the hearing examiner and any party or interested person or his/her representative shall be governed by R.S. 49:950 et seq., the Louisiana Administrative Procedure Act.

H. Depositions and Subpoenas. The taking and use of depositions and the issuance of subpoenas shall be governed by R.S. 49:956 (A)(5)-(8) of the Louisiana Administrative Procedure Act.

I. Hearing. The procedure to be followed for hearings held under §1275 shall be as provided in Subsection 1267.J.

J. Transcript. The rules governing transcripts for hearings held under §1275 shall be as provided in Subsection 1267.K.

K. Final Decision. All decisions shall be in writing and shall be rendered and acted upon by the director within 60 days of the close of the hearing. A copy of the decision shall be sent immediately to the applicant by registered or certified mail, return receipt requested. A copy of the decision shall also be sent to any other persons directly affected by the decision.

L. Rehearing and Appeal. Procedures for rehearings and appeals shall be governed by R.S. 49:959 and 965.

M. Record. The record in a hearing under this Section shall consist of the materials listed in Subsection 1267.M.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2802(D).

HISTORICAL NOTE: Adopted by the Office of the Governor, Office of Elderly Affairs, LR 18:1257 (November, 1992), amended LR 26:81 (January 2000).

P. F. "Pete" Arceneaux, Jr.  
Executive Director

0001#059

## RULE

### Department of Health and Hospitals Board of Examiners of Nursing Facility Administrators

#### Registration of Licenses and Certificates (LAC 46:XLIX.1103)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Board of Examiners of Nursing Facility Administrators has amended the rules pertaining to annual registration and registration fees. The board finds it necessary to amend this rule to provide for annual registration periods and new registration fees in order to ensure continued protection of public health and continued compliance with Federal rules and regulations regarding Medicaid/Medicare.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLIX. Board of Examiners of Nursing Facility Administrators

#### Chapter 11. Licenses

#### §1103. Registration of Licenses and Certificates

A.1. Every person who holds a valid license as a nursing home administrator issued by the board shall immediately upon issuance thereof be deemed registered with the board and issued a certificate of registration. Thereafter, such individual shall annually apply to the board for a new certificate of registration and report any facts required by the board on forms provided for such purpose.

A.2. - 3. ...

B.1. Upon making an application for a new certificate of registration such licensee shall pay an annual registration fee of \$245 and, at the same time, shall submit evidence satisfactory to the board that, during the annual period immediately preceding such application for registration, they have attended a continuing education program or course of study as provided in Chapter 9 of these rules and regulations. A copy of the certificate(s) of attendance for 15 hours of approved continuing education shall be attached to the annual re-registration application.

2. A licensed nursing home administrator no longer practicing in Louisiana may place his license in an inactive status. He shall continue to register his license annually but is exempt from continuing education requirements. Should a licensee wish to reactivate their license they shall undergo 60 days of on-site re-orientation under supervision of a board-approved preceptor, unless such person has been actively practicing in another state and meets Louisiana continuing education requirements.

B.3. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 9:461 (July 1983), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators LR 18:181 (February 1992), amended LR 25:1627 (September 1999), repromulgated LR 26:82 (January 2000).

Kemp Wright  
Executive Director

0001#044

**RULE**

**Department of Health and Hospitals  
Board of Nursing**

**Continuing Education Submission Fees  
(LAC 46:XLVII.3335)**

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Nursing (board) pursuant to the authority vested in the board by R.S. 37:918, R.S. 37:919 has amended the Professional and Occupational Standards pertaining to the fee increases of the board. The amendments of the rules are set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 33. General**

**§3335. Continuing Education/Nursing Practice**

A. - G.10.b. ...

c. Fees payable upon submission of an application for total provider unit review are \$800 for two years, with \$100 being non-refundable.

11.a. - b. ...

c. Fees payable upon submission of an application for total provider unit review are \$800 for two years, with \$100 being non-refundable.

H. - H.2.a. ...

b. Fees payable upon submission of an application for review of an offering are: \$75 (non-refundable) plus \$10 for each contact hour of instruction, up to a maximum of \$700. A fee of 25 percent of the original fee, with a minimum of \$30, is payable for an extension of the approved status for one year.

J.1. - 4. ...

5. Fees payable upon submission of a refresher course for approval are \$400 with \$100 being non-refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:911, R.S. 37:918(4)(12) and R.S. 37:920(E).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:74 (March 1981), amended by the Department of Health and Hospitals, Board

of Nursing, LR 24:1293 (July 1998), amended LR 25:514 (March 1999), LR 26:83 (January 2000).

Barbara L. Morvant, R.N., M.N.  
Executive Director

0001#043

**RULE**

**Department of Health and Hospitals  
Board of Nursing**

**Fees for Education Services  
(LAC 46:XLVII.3505)**

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Nursing (board) pursuant to the authority vested in the board by R.S. 37:918, R.S. 37:919 has amended the Professional and Occupational Standards pertaining to the alternative to disciplinary proceedings of the board. The amendments of the rules are set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 35. Nursing Education Programs**

**§3505. Approval**

A. ...

B. Notwithstanding any other provisions of this Chapter, the board shall collect in advance fees for education services as follows:

- 1. School Approval Site-Visit \$500.00/site visit
- 2. Out of State Clinical Approval \$250.00

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:185 (April 1977), amended LR 10:1024 (December 1984), repromulgated LR 24:1293 (July 1998), amended LR 26:83 (January 2000).

Barbara L. Morvant, R.N., M.N.  
Executive Director

0001#045

**RULE**

**Department of Health and Hospitals  
Board of Nursing**

**Registration and Licensure Fees  
(LAC 46:XLVII.3341)**

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Nursing (board) pursuant to the authority vested in the board by R.S. 37:918, R.S. 37:919 has

amended the Professional and Occupational Standards pertaining to a fee increase of the board. The proposed amendments of the rules are set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 33. General**

**§3341. Fees for Registration and Licensure**

A. Notwithstanding any other provisions of this Chapter, the board shall collect in advance fees for licensure and administrative services as follows:

1. Licensure
  - a. Examination Application \$ 80.00
  - b. Endorsement Application \$100.00
  - c. RN Renewal Fee \$45.00
  - d. RN Late Renewal Fee \$90.00
  - e. Retired License Fee (one time fee) \$45.00
  - f. RN Reinstatement from Inactive or Retired Status \$45.00
  - g. RN Reinstatement from Delinquent Status \$90.00
  - h. Initial APRN Licensure Application \$100.00
  - i. APRN Endorsement Application \$100.00
  - j. APRN Renewal Fee \$50.00
  - k. APRN Late Renewal Fee \$100.00
  - l. APRN Reinstatement from Inactive Status \$50.00
  - m. APRN Reinstatement from Delinquent Status \$100.00
  - n. APRN Prescriptive Authority Application \$100.00
  - o. APRN Prescriptive Authority Site Change \$25.00
  - p. Reinstatement of Prescriptive Authority Privileges \$ 50.00
  - q. Verification of Licensure \$ 25.00
  - r. Duplicate Application \$ 10.00
  - s. Duplicate License \$ 10.00
2. Miscellaneous
  - a. Consultation \$100.00 /hour
  - b. Photocopies \$.50/page
  - c. Certified Documents \$1.00/page
  - d. Listing of Registered Nurses/Advanced Practice  
Registered Nurses \$10.00 programming fee plus costs as follows:  
.02/per name on disk  
.04/per name on cheshire labels  
.06/per name on press-on labels

- e. Special Programming Request Actual Costs (minimum \$100.00)/per program

B. ...

1. The board shall collect a \$25 fee for returned checks for any of the fees discussed in §3341.A.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and R.S. 37:927.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), amended LR 26:84 (January 2000).

Barbara L. Morvant, R.N., M.N.  
Executive Director

0001#036

**RULE**

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

Fees; Certificate Renewal; Late Charge  
(LAC 46:LXXXV.809 and 811)

The Louisiana Board of Veterinary Medicine amends LAC 46:LXXXV.809 and 811 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Veterinary Practice Act, La. R.S. 37:1518 et seq. No preamble has been prepared. The rule amendment has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 8. Registered Veterinary Technicians**

**§809. Fees**

A. The board hereby adopts and establishes the following fees:

- Examination fee, pre-examination, state or national (this fee does not include vendor's cost) \$40
- Original certificate fee \$30
- Annual renewal of certificate fee \$30
- Application fee \$25

B. The examination fee shall be exclusive of vendor costs which must also be paid by the examinee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1549.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:227 (March 1990), amended LR 26:84 (January 2000).

**§811. Certificate Renewal; Late Charge**

A. - B. ...

C. Any application for renewal of a certificate of approval and/or any payment of the annual renewal of certificate fee which is postmarked after September 30 of

each year shall be subject to all accrued fees and an additional late fee of \$20 per fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1549.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:227 (March 1990), amended LR 26:84 (January 2000).

Kimberly B. Barbier  
Administrative Director

0001#028

## RULE

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

#### Lead Poisoning Prevention Program

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 40:5; 40:1299.21; 40:1299.22 and 40:1299.23, the Department of Health and Hospitals, Office of Public Health has amended regulations pertaining to Parish Lead Poisoning Prevention and Treatment Programs as published in the *Louisiana Register* of February 20, 1989.

The proposed rule establishes the relationship between the local and state Lead Poisoning Prevention Programs, redefines the blood lead level of a lead case, and specifies method of reporting. This rule also specifies reporting requirements for laboratories responsible for conducting analysis of blood lead levels on children in Louisiana between the ages of 6 to 72 months of age, inclusive.

#### A. Relationship of Local and State Lead Poisoning Prevention Programs

The local lead prevention program shall collaborate with the state Lead Prevention Program at the Office of Public Health and adhere to current Centers for Disease Control and Prevention guidelines.

#### B. Definitions

1. *A Case of Lead Poisoning* in children between the ages of six months of age is defined as:

- a venous blood-lead level greater than or equal to 15 Mg/dl (micrograms per deciliter);
- acute symptomatic illness consisting of lead colic with or without lead encephalopathy; or
- chronic symptomatic illness consisting of the signs and symptoms of chronic plumbism, including, but not limited to anemia, nephropathy, neuropathy, loss of developmental skills, recurrent lead colic and/or recurrent lead encephalopathy.

2. *Previously Reported* is defined as any case of lead poisoning which has been diagnosed by a medical provider, and reported to the Office of Public Health as specified in Subpart C of this rule.

3. *Hazardous Lead Environment* is defined as any lead based substance that exists in or about a dwelling, dwelling unit, household, school or day care facility or institutions in which children or other persons commonly reside or visit; and said lead based substance is determined to be on any surface, exposed surface, chewable surface and contains 0.5

percent less of the total weight or more than six hundredths of one percent (0.06%) lead by weight of nonvolatile content or in excess of seventh-tenth milligrams per square centimeter (0.7 mg/cm<sup>2</sup>) of surface when tested by a radioisotope x-ray fluorescent analyzer or any other equivalent method; or said lead based substance contains less lead than stipulated in this definition (see Section 4:001 of the Louisiana Sanitary Code also), but has been demonstrated to be a source of lead poisoning in any person, especially a child under six (6) years of age.

4. *Clinical Laboratory* is a facility for the biological, microbiological, Serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of substances derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease, or in the assessment or impairment of the health of human being.

#### C. Mandatory Case Reporting by Health Care Providers

1. Medical providers must report a lead case to the Lead Poisoning Prevention Program, Office of Public Health within 48 hours to ensure appropriate and timely follow-up. All health care providers shall assure that all the following information is completed for all blood lead analysis ordered by the health care provider and that this information accompanies the sample to the testing laboratory:

- child's name;
- parent's or the guardian's name;
- child's street and mailing address, including the city, state, parish, and zip code;
- child's date of birth;
- child's sex;
- child's race;
- child's national origin;
- child's Social Security Number;
- phone number where the child can be reached;
- Medicaid number, if any;
- type of sample (Venous or Capillary);
- sample date;
- type of test: first, annual, or repeat test;
- blood lead level results in micrograms per deciliter (Mg/dl).

2. Lead cases along with the specified information can be reported either by fax at (504) 599-1376 or by telephone at (504) 599-0256, and followed up by the mailing of the information to the Louisiana Childhood Lead Poisoning Prevention Program, Office of Public Health, Room 311, 325 Loyola Avenue, New Orleans, LA. 70112.

#### D. Reporting Requirements of Blood Lead Levels by Laboratories for Public Health Surveillance

1. Clinical laboratories responsible for conducting analysis to determine blood lead levels, and/or responsible for reporting the results of analysis to referring laboratories and other health care providers, shall also report the results to the Louisiana Office of Public Health at least monthly to the Lead Poisoning Prevention Program at the address listed in Subpart C above.

2. The following information is essential for appropriate monitoring, screening and treatment of lead poisoning.

a. All results of blood lead testing for children between the ages of 6 to 72 months of age must be reported, regardless of the test results.

b. Laboratories shall collect and report all of the information specified in items a - n in Subpart C above. However, items b, c, f, g, h, i, and j must only be reported if the information is available to the laboratory.

c. Laboratories can report the information required by this rule to the Office of Public Health. by electronic transfer.

David W. Hood  
Secretary

0001#052

## RULE

### Department of Insurance Office of the Commissioner

Regulation 69~~C~~ Year 2000 Exclusions  
(LAC 37:XIII.8705, 8709, 8713-8717,  
8721, 8725, 8727, 8731)

As authorized by Title 22:1 et seq. and in accordance with the provisions of LRS 49:950 et seq. of the Administrative Procedure Act, the Commissioner of Insurance hereby amends Regulation 69, which governs the use of Year 2000 Exclusions in this state.

The regulation has been divided into subchapters. Subchapter A contains general provisions. Subchapter B applies only to the admitted market. Subchapter C contains the substantive provisions applicable to the surplus lines market. Subchapter D addresses administrative actions by the Commissioner. All references to reinsurers are being deleted.

Notwithstanding the revisions to this regulation, surplus lines insurers and reinsurers remain subject to all applicable parts of the Insurance Code, including but not limited to Part XXVI, and should act in accordance therewith. Insurers which engage in conduct which is not in the best interest of the public or the policyholder will result in the imposition of sanctions as authorized by law.

### Title 37 INSURANCE

#### Part XIII. Regulations

#### Chapter 87. Regulation 69~~C~~ Year 2000 Exclusions

##### Subchapter A. General Provisions

##### §8705. Scope and Applicability

A. The scope of application of this regulation differs depending on whether the insurer is an admitted insurer or a surplus lines insurer.

B. Admitted Insurers. Except for Subchapter C, this regulation applies to all admitted property and casualty insurance companies engaged in the business of insurance in this state and governs the use of Y2K exclusions whether issued before, on or after its effective date. It governs all Y2K exclusions affecting contracts of insurance delivered or issued for delivery in this state by admitted insurers which cover property risks or liability risks located in this state, or are to be performed in Louisiana regardless of where made or delivered.

C. Surplus Lines Insurers. Surplus lines insurers must comply with Subchapter C of this regulation. Subchapter B does not apply to surplus line insurers.

(Former subsection C is now the last sentence in subsection A.)

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3., LRS 22:1262 and LRS 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 25:1256 (July 1999), LR 26:86 (January 2000).

##### §8709. Definitions

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein:

*Admitted Insurers* means any and all property and casualty insurers authorized to do business in this state pursuant to a Certificate of Authority duly issued by the Commissioner of Insurance for the State of Louisiana.

*Commissioner* means the commissioner of insurance for the state of Louisiana.

\* \* \*

*Surplus Lines Insurers* means insurers placed on the list of approved unauthorized insurers maintained by the Commissioner of Insurance for the State of Louisiana in accordance with LRS 22:1262.1.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1256 (July 1999), LR 26:86 (January 2000).

##### Subchapter B. Admitted Insurers

##### §8713. Underwriting Standards

A. - A.3.b. ...

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3. LRS 22:1211 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1257 (July 1999), LR 26:86 (January 2000).

##### §8715. Monitoring of Market Conduct

A. ...

B. Any admitted insurer, which denies coverage or issues a reservation of rights letter to an insured based in toto or in part upon a Y2K exclusion in the policy must notify the LDOI. The notice must be provided to the LDOI within fifteen (15) days of the denial of coverage or issuance of the reservation of rights letter. A copy of the denial of coverage letter or reservations of rights letter is sufficient notice.

C. The LDOI will closely monitor the use of Y2K exclusions to make certain that they are not used inappropriately by admitted insurers in underwriting or claimshandling. Examples of inappropriate activity are: blanket use of Y2K exclusions; failure to individually underwrite except when authorized by this Regulation; denial of claims inconsistent with underwriting standards; canceling or nonrenewing coverage as a general business practice; widespread unavailability of "buy back" coverage; and, unsupported blanket denial of claims based upon "lack of fortuity", or the "known risk" and/or "expected or intended" exclusions.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3; LRS 22:1211 et seq., LRS 22:1301 and LRS 22:1404.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1257 (July 1999), LR 26:86 (January 2000).

**§8717. Representations and Warranties**

No representation or warranty may defeat coverage or be used to deny a claim by an admitted insurer unless the representation or warranty is (a) material (b) false) and (c) made with the intent to deceive. Questionnaires used to assess Y2K exposure are subject to this standard. Denial of coverage by an admitted insurer on the grounds that an answer in a questionnaire is erroneous or inadequate, in the absence of fraud, will result in disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3, LRS 22:619.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), LR 26:87 (January 2000).

**§8719. Notice**

A. No insurance policy may be issued or renewed, by an admitted insurer, with a Y2K exclusion unless the insured is provided with a copy of the Y2K Notice prepared by the LDOI. (The text of the Notice can be found in Section 8719.C.)

B. Notice for renewals must be provided by an admitted insurer not less than sixty (60) days in advance to the insured and the agent of record.

C. Below is the notice required by this Section.

C.1 - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), LR 26:87 (January 1999).

**§8721. Exemptions**

A. ...

B. Individual Insureds. An exemption may be granted upon written notification to the LDOI by an admitted insurer regarding an individual policyholder which poses an extraordinary risk due to its failure to take any steps to remedy its Y2K problem. Documentation that demonstrates the necessity for the exemption must be maintained in the insureds file for a period of five (5) years from the date of issuance of the exclusion.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), LR 26:87 (January 2000).

**Subchapter C. Surplus Lines Insurers**

**§8723. Mandatory Policyholder Notice**

A. Every insurance contract issued or delivered as a surplus line coverage in this state, as provided in Part XXVII., Chapter 1. of Title 22 of the Louisiana Revised Statutes, which has a Y2K exclusion shall have attached to it the Policyholder Notice found in Subsection C. of this Section. Insurers are not precluded from issuing their own notices in conjunction with the mandatory notice.

B. Formatting instructions. The caption must be in large type and in bold. The text of the notice should be formatted as shown below and should be in a font of not less than 12 point type.

C. Policyholder Notice Text

IMPORTANT NOTICE FROM (COMPANY)  
AND THE LOUISIANA DEPARTMENT OF INSURANCE  
PLEASE READ IT!  
\*\*\*

A NEW ENDORSEMENT HAS BEEN ATTACHED TO YOUR POLICY. THE NEW ENDORSEMENT DEALS WITH THE "Y2K" PROBLEM.

USE OF THIS ENDORSEMENT IS GOVERNED BY LOUISIANA DEPARTMENT OF INSURANCE REGULATION 69.

IF YOU HAVE QUESTIONS ABOUT THE ENDORSEMENT OR THE REGULATION YOU MAY CONTACT THE LOUISIANA DEPARTMENT OF INSURANCE AT THE ADDRESS LISTED BELOW:

COMMISSIONER JAMES H. "JIM" BROWN  
LOUISIANA INSURANCE BUILDING  
950 NORTH FIFTH STREET  
BATON ROUGE, LA 70802  
OR BY TELEPHONE:  
342-5900, 342-0895 OR 342-0896  
1-800-259-5300 OR 1-800-259-5301

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3 and LRS 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:87 (January 2000).

**§8725. Claims Notice**

A. Every surplus lines insurer which denies coverage of a claim on the grounds that the claim is excluded in whole or in part by the policy's Y2K exclusion shall provide the insured and the claimant, if the claimant is not an insured, the notice found in subsection C of this section.

B. Formatting instructions. The caption must be in large type and in bold. The text of the notice should be formatted as shown below and should be in a font of not less than 12 point type.

C. Claim Notice Text

IMPORTANT NOTICE FROM LOUISIANA DEPARTMENT OF INSURANCE  
PLEASE READ IT!

\*\*\*

POLICY No. \_\_\_\_\_  
CLAIMANT: \_\_\_\_\_  
CLAIM No. \_\_\_\_\_

COVERAGE FOR THIS CLAIM HAS BEEN DENIED BECAUSE YOUR INSURER HAS DETERMINED THAT THE Y2K ENDORSEMENT ATTACHED TO THE POLICY EXCLUDES COVERAGE FOR THIS TYPE OF LOSS.

IF YOU QUESTION THE DENIAL OF COVERAGE, YOU MAY CONTACT THE LOUISIANA DEPARTMENT OF INSURANCE AT THE ADDRESS LISTED BELOW:

COMMISSIONER JAMES H. "JIM" BROWN  
LOUISIANA INSURANCE BUILDING  
950 NORTH FIFTH STREET  
BATON ROUGE, LA 70802  
OR BY TELEPHONE:  
342-5900, 342-0895 OR 342-0896  
1-800-259-5300 OR 1-800-259-5301

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3 and LRS 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:87 (January 2000).

**§8727. Issuance of Notices**

Responsibility for the issuance of the notices required by Sections 8723 and 8725 of this subchapter may be delegated

to the local surplus lines broker responsible for placing the coverage. Notwithstanding the foregoing, the surplus line insurer, upon request of the Commissioner, must be able to show that it has procedures in place to assure compliance with this subchapter.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3 and LRS 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:87 (January 2000).

#### **Subchapter D. Administrative Actions**

##### **§8729. Hearings**

Hearings, including investigatory hearings, which arise under the provisions of this regulation shall be conducted by the Commissioner.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3, LRS 22:1211 et seq., and LRS 22:1457.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), LR 26:88 (January 2000).

##### **§8731. Penalties**

Upon proof of noncompliance with any applicable provisions of this regulation by an insurer, such disciplinary actions and/or penalties as are authorized by law, and in the manner provided thereby, may be imposed by the Commissioner.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:2, LRS 22:3, LRS 22:1211 et seq., and LRS 22:1457.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), LR 26:88 (January 2000).

James H. "Jim" Brown  
Commissioner of Insurance

0001#033

#### **RULE**

#### **Department of Public Safety and Corrections Board of Pardons**

Hearing of Clemency  
(LAC 22:V.109)

In accordance with the Administrative Procedure Act, LSA-R.S. 49:953(B), the Department of Public Safety and Corrections, Board of Pardons, hereby adopts amendments to rules and procedures dealing with the requirement for the publication of notice of application for clemency.

#### **Title 22**

#### **CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**

#### **Part V. Board of Pardons**

#### **Chapter 1. Applications**

##### **§109. Hearing Granted**

A. After notice to a applicant that a hearing has been granted the applicant must provide the Board of Pardons office with proof of advertisement within 90 days from the date of notice to grant a hearing. Advertisement must be published in the official journal of the parish where the offense occurred. This ad must state:

"I (applicant's name), (document number), (date of birth), currently residing in (parish/county), (state), have applied for clemency for my conviction for (crime) which occurred (day/month/year), in (parish/county), (state). If you have any comments or wish to communicate with the Board of Pardons please call (225) 342-5421."

B. Applicant may submit additional information, (e.g., letters of recommendation and copies of certificates of achievement and employment/residence agreement).

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 15:572.4, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1063 (December 1990), amended LR 26:88 (January 2000).

Irvin L. Magri, Jr.  
Chairman

0001#074

#### **RULE**

#### **Department of Public Safety and Corrections Office of Motor Vehicles**

Compulsory Insurance  
(LAC 55:III.1777 and 1781)

The Department of Public Safety and Corrections, Office of Motor Vehicles, pursuant to the authority contained in R.S. 32:863.2, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., amends LAC 55, Part III, Chapter 17, Subchapter B, §§1777 and 1781.

Section 1777 is being amended to add a new transaction type in order to comply with Act No. 74 of the 1999 Regular Session which enacted R.S. 32:863(A)(6) to provide that there shall be no sanctions imposed when an insurance policy is canceled because of the rescission of the sale of the involved motor vehicle. Section 1781 is being amended to provide for an additional method by which security providers can report insurance coverage information.

#### **Title 55**

#### **PUBLIC SAFETY**

#### **Part III. Motor Vehicles**

#### **Chapter 17. Compulsory Insurance**

#### **Subchapter B. Reporting of Initiation and Any Subsequent Change of Insurance Coverage**

#### **§1777. Transaction Types and How the Transaction Types are Used**

A.1. - 5. ...

6. 7 = Termination of a motor vehicle liability policy that occurred as a result of the rescission or other cancellation of the sale of the motor vehicle on which the policy was issued. The insured shall not be required to pay any fees that otherwise may be required by R.S. 32:863 when the insurer uses this code to report a cancellation.

B.1. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:863.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:1775 (September 1998), amended LR 26:88 (January 2000).

#### **§1781. Reporting Methods**

A. - C. ...

D. Section 1781.C shall also not apply to security providers who have:

1. received written approval from the Department to file reports via the Internet; and

2. entered into a written agreement with the Department to indemnify the Department against any loss which might arise out of transmitting the data over the Internet.

E. The reports submitted to the Department pursuant to Section 1781.D and E shall be formatted in the manner approved by the Department and shall include the following information:

1. the make, model, year and vehicle identification number to the subject vehicle;
2. the insurance company code;
3. the type of transaction;
4. the lessee, renter, or owner address, including city, state, and zip code;
5. the policy or binder number;
6. the termination, or change date, or the effective date and the issue date; and
7. the lessee, renter, or owner name, name indicator, and identification number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:863.2.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:1776 (September 1998), amended LR 26:88 (January 2000).

Nancy Van Nortwick  
Undersecretary

0001#023

## **RULE**

### **Office of Public Safety and Corrections Office of Motor Vehicles**

#### **License Plates (LAC 55:III.325 and 327)**

Under the authority of R.S. 47:511 and R.S. 47:508, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Public Safety and Corrections, Office of Motor Vehicles (Department), hereby adopts new rules regarding the adoption of the International Registration Plan and the issuance of permanent metal plates to commercial motor vehicles registered under the International Registration Plan.

This rule adopts the International Registration Plan by reference. The International Registration Plan authorizes the apportioned registration of fleets of vehicles among the various jurisdictions in which the vehicles are operated. This plan provides that for one license plate even though the motor vehicle is registered in more than one jurisdiction. Louisiana was approved to participate in the plan on December 1, 1975, and began participating in the plan on April 1, 1976.

The other rule is pursuant to R.S. 47:508 and authorizes the Department to issue permanent metal plates to commercial motor vehicles registered pursuant to the plan. These plates are to be renewed without the issuance of renewal stickers, tabs, or emblems.

## **Title 55**

### **PUBLIC SAFETY**

#### **Part III. Motor Vehicles**

#### **Chapter 3. License Plates**

##### **Subchapter A. Types of License Plates**

##### **§325. International Registration Plan**

The Department of Public Safety and Corrections, Office of Motor Vehicles, hereby adopts by reference, the International Registration Plan, hereinafter referred to as the plan, adopted in August 1994 and as revised through February 15, 1999 by the member jurisdictions, and published by International Registration Plan, Inc. The Department only adopts the articles and sections contained in the agreement, as well as the exceptions to the plan as reflected in the February 15, 1999 revision and included in Appendix C of the plan. The commentary and governing board decisions included with the adopted plan shall not be part of this rule, but may be considered by the Department in interpreting and implementing the various sections of the plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:511.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 26:89 (January 2000).

##### **§327. Apportioned Plates**

A. All commercial motor vehicles registered pursuant to the "International Registration Plan" and issued an apportioned license plate shall be issued a permanent metal license plate at the time of first issuance, or at the time of first renewal of the apportioned registration after the effective date of this rule.

B. The permanent metal plate issued pursuant to §321.A shall be renewed annually, but without the issuance of a renewal emblem, sticker, or tab by the Department of Public Safety and Corrections, Office of Motor Vehicles. The Department shall issue a renewed certificate of registration or other credential to indicate that the metal plate attached to, and displayed by, the commercial motor vehicle is still valid. The original or a copy of the renewed certificate of registration or other credential shall be kept with the commercial motor vehicle described in the certificate or other credential.

C. The initial certificate of registration or other credential, as well as all renewed certificates of registration or other credentials, shall not be issued until all fees and taxes, together with any applicable penalties and interest, as are required by statute, are paid by the applicant.

D. A permanent metal plate issued pursuant to this section may be used for a period of five years if properly and timely renewed. After the expiration of the fifth year, the registrant shall replace the old plate with a new plate issued by the Department. The registrant shall cause the old plate to be destroyed. The failure to comply with this paragraph may result in the imposition of a fine of \$25 per plate. The Assistant Secretary for the Office of Motor Vehicles may, for good cause, extend the replacement period provided in this section. Such a request for extension shall be in writing and shall state the reason for the extension of the replacement period. Only one extension pursuant to this section may be

granted, and the granting of an extension shall be in writing. An extension granted pursuant to this section shall not exceed two years.

E. For purposes of §327, the Department interprets the Interstate Registration Plan described in R.S. 47:508(H), to mean the "International Registration Plan" described in R.S. 47:511, and adopted by the Department by reference in §325.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:508(H).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 26:89 (January 2000).

Nancy Van Nortwick  
Undersecretary

0001#022

## RULE

### Department of Public Safety and Corrections Office of State Police

#### Explosive Code (LAC 55:I.Chapter 15)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq. and R.S. 40:1472.1 et seq., amends LAC 55:I.Chapter 15 to provide authority for the Department's granting variances from the rules in addition to redefining certain terms used therein and clarifying certain technical requirements concerning the use of explosives.

#### Title 55

#### PUBLIC SAFETY

#### Part I. State Police

#### Chapter 15. Explosive Code

#### §1501. Scope of Rules and Regulations

A. - D. ...

E. The licensee, on specific approval in writing by the Deputy Secretary of Public Safety Services, as provided by this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in these Rules and Regulations. The Deputy Secretary of Public Safety Services may approve an alternate method or procedure, subject to stated conditions, when he/she finds that:

1. good cause is shown for the use of the alternate method or procedure;
2. the alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and
3. the alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the State of Louisiana or hinder the effective administration of these Rules and Regulations.

F. Where the licensee desires to employ an alternate method or procedure, he/she shall submit a written application to the Deputy Secretary of Public Safety Services. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons for it. Alternate methods or procedures may not

be employed until the application is approved by the Deputy Secretary of Public Safety Services. The licensee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Deputy Secretary of Public Safety Services, the effective administration of these Rules and Regulations is hindered by the continuation of the authorization. As used in this paragraph, alternate methods or procedures include alternate construction or equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of State Police, at the Office of the State Register, 1974, promulgated and amended LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 26:90 (January 2000).

#### §1503. Definitions

\*\*\*

*Deputy Secretary of Public Safety Services* the deputy secretary for Public Safety in the Department of Public Safety and Corrections, or his designee.

\*\*\*

*Inhabited Building* any building or structure regularly used in whole or part as a place of human habitation, also any church, school, store, railway passenger station, airport terminal for passengers, and any other building or structure where people are accustomed to congregate or assemble, but excluding buildings or structures occupied in connection with the manufacture, transportation, storage and use of explosives. A building, such as an office building or repair shop, which is part of the premises of an explosives licensee and is used in connection with the manufacture, transportation, storage, or use of explosives is not an inhabited building.

\*\*\*

*Oxidizer* any material that may, generally by yielding oxygen, cause or enhance the combustion of other materials.

\*\*\*

*Primary Licensee* is the responsible party holding a valid manufacturer-distributor, dealer or user license.

\*\*\*

*Secured Area* any location that is either locked or under the immediate control of a licensee.

\*\*\*

*Temporary* no more than forty-eight hours.

\*\*\*

*Vessel* any description of watercraft used or capable of being used as a means of transportation on water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of State Police, at the Office of the State Register, 1974, promulgated and amended LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 26:90 (January 2000).

#### §1507. Blasting Agents

A. - M. ...

N. Metal dusts (aluminum powder, etc.) peroxides, chlorates or perchlorates shall not be used unless such operations are conducted in a manner approved by the Deputy Secretary of Public Safety Services.

O. - T. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of State Police, at the Office of the State Register, 1974, promulgated and amended LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 26:90 (January 2000).

#### **§1509. General Storage Requirements**

A. - C. ...

D. The ground around outdoor magazines shall slope away for drainage. The land surrounding outdoor magazines shall be kept clear of brush, dried grass, leaves, and other combustible materials for a distance of 25 feet in each direction.

E. - G. ...

H. When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways and highways; and in addition, they shall be separated from each other by not less than the distances shown for Separation of Magazines, (Table 1) except that the quantity of explosives contained in detonator magazines shall govern in regard to the spacing of said detonator magazines from magazines containing other explosives. If any two or more magazines are separated from each other by less than the specified Separation of Magazines (Table 1) distances, then such two or more magazines, as a group, must be considered as one magazine, and the total quantity of explosives stored in such group must be treated as if stored in a single magazine located on the site of any magazine of the group, and must comply with the minimum of distances specified from other magazines, inhabited buildings, railways and highways.

1. All types of detonators in strengths up to and including No. 8 detonators shall be rated at 1.5 pounds of explosives per 1,000 caps. Detonating cord, 50 grains, shall be rated at 8 pounds of explosives per 1,000 feet. Detonating cords with larger or smaller grains per foot will be rated proportionately.

2. Explosive operations carried out on a vessel shall be required to comply with the distances shown for Separation of Magazines (Table 1) only as the physical limitations of the vessel will permit. Explosive magazines shall not be located under, over, or immediately adjacent to pressurized gas lines or high voltage power lines, or on levees constructed for major flood control.

I. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of State Police, at the Office of the State Register, 1974, promulgated and amended LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 26:91 (January 2000).

#### **§1511. Magazine Construction Requirements**

A. - B. ...

C. Magazine sites upon which (strickethrough: outdoor type) magazines are located shall be posted with signs reading "explosives-keep off" (or equivalent) legibly printed thereon in letters not less than two inches high. These signs shall be visible from any direction. A second sign shall be posted at the entrance of the facility and shall read "danger - never fight explosives fires -explosives are stored on this site - call (Emergency Phone Number)" legibly printed thereon in letters not less than two inches high. Such signs shall be located so as to minimize the possibility of a bullet traveling in the direction of the magazine if anyone should shoot at the sign. The name and address of the owner of portable magazines will be metal stamped on the door of the magazine. Portable magazines (trailer type) may be stamped on either the tongue or the door. No contrasting signs will be displayed on outside type magazines.

D. ...

E. Magazines constructed according to the following minimum specifications are approved as bullet-resistant and fire-resistant.

E.1-O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of State Police, at the Office of the State Register, 1974, promulgated and amended LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 24:105 (January 1998), LR 26:91 (January 2000).

#### **§1513. Storage within Magazines**

A. - E. ...

F. Smoking, matches, open flames, spark producing devices and firearms shall be prohibited inside of or within 50 feet of magazines.

G. - H. ...

I. The keys to a primary licensee's magazine doors and covers must be available only to the primary licensee and one of his blasters. Variances to this requirement may be requested in writing to the Deputy Secretary of Public Safety Services. It is the primary licensee's responsibility to keep his magazine locked from all unauthorized persons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of State Police, at the Office of the State Register, 1974, promulgated and amended LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 26:91 (January 2000)

#### **§1531. General Requirements**

A. - F. ...

G. When blasting is done in congested areas or in close proximity to a structure, railway, or highway or any other installation that may be damaged, the blast shall be covered before firing with a mat so constructed that it is capable of preventing fragments from being thrown. When such blasting is being carried out near a highway, the operator may, in lieu of using a mat, and with the permission of local authorities, block the road adjacent to the firing area while

such firing is in progress. The Deputy Secretary of Public Safety Services must be notified in advance, and approval received, prior to this type of blasting operation being conducted.

H. ...

I. Persons authorized to prepare explosive charges or conduct blasting operations shall use every reasonable precaution, which may include but is not limited to warning signals, flags, barricades, or blasting mats approved by the Deputy Secretary of Public Safety Services, to insure the safety of the general public and workmen.

J. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of State Police, at the Office of the State Register, 1974, promulgated and amended LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 24:106 (January 1998), LR 26:91 (January 2000).

Nancy Van Nortwick  
Undersecretary

00001#029

**RULE**

**Department of Public Safety and Corrections  
Office of State Police**

Underground Utilities (LAC 55:I.Chapter 21)

The Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, in accordance with R.S. 49:950 et seq., and R.S. 40:1749.23E, hereby adopts rules pertaining to the enforcement of the underground utilities statutes, R.S. 40:1749.11 et seq.

**Title 55**

**PUBLIC SAFETY**

**Part I. State Police**

**Chapter 21. Underground Utilities**

**§2101. Purpose**

It is the purpose of these rules to promote the protection of property, workmen, and citizens in the immediate vicinity of an underground facility or utility from damage, death, or injury and to promote the health and well-being of the community by preventing the interruption of essential services which may result from the destruction of, or damage to, underground facilities or utilities. The purpose of this rule is to further provide for the enforcement of the Louisiana Underground Utilities and Facilities Damage Prevention Law. An advisory committee composed of representatives from the relevant industries, state government, and the regional notification centers shall be formed to assist in implementation of these rules.

AUTHORITY NOTE: Promulgated in accordance with R. S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:92 (January 2000).

**§2103. Definitions**

A. For the purposes of these rules, the following terms shall have the meanings ascribed to them in this Section.

*Damage* any defacing, scraping, gorging, breaking, cutting, or displacement of, impact upon or removal of an underground facility or utility or its means of primary support.

*Demolisher* any person engaged in the act of demolishing as defined in R. S. 40:1749.12(2).

*Demolition* the total or partial wrecking, razing, rendering, moving, or removing of any building or structure, movable or immovable.

*Department* the Department of Public Safety and Corrections, Public Safety Services.

*Emergency* any crisis situation which poses an imminent threat or danger to life, health, or property and requires immediate action.

*Excavation or Excavate* any operation for the purpose of movement or removal of earth, rock, or other materials in or on the ground by the use of powered or mechanical or manual means, including pile driving, digging, blasting, auguring, boring, back filling, dredging, compressing, plowing-in, trenching, ditching, tunneling, land-leveling, grading, and mechanical probing.

*Excavator* any person who engages in excavation operations.

*Inclement Weather* weather that prohibits or impedes a worker's use of his locating equipment or causes undue risk to himself or his equipment such as lightning, heavy rain, tornadoes, hurricanes, floods, sleet, snow, or flooding conditions.

*Mark by Time* the date and time provided by the regional notification center by which the utility operator is required to mark the location or provide information to enable an excavator, using reasonable and prudent means, to determine the specific location of the facility as provided for in R.S. 40:1749.14(D).

*Operator* any person, individual, governmental agency or political subdivision or their agents, joint venture, firm, partnership, association, or corporation who owns or operates, a public or private underground facility or utility which furnishes a service or material or stores, transports, or transmits electric energy, steam, oil, natural gas, gas, mixture of gases, petroleum, petroleum products, hazardous or flammable fluids, toxic or corrosive fluids/gases, including telephone or telegraph system, fiber optic electronic communication systems, or water or water systems, or drainage, sewer systems, or traffic control systems or other items of like nature.

*Person* an individual, firm, partnership, association, corporation, joint venture, municipality, governmental agency, political subdivision, or agent of the state or any legal representative, thereof.

*Regional Notification Center* may be any one of the following:

a. an entity designated as nonprofit by the Internal Revenue Service under Section 501(c)(4) of the Internal Revenue Code and which is organized to protect its members from damage and is certified by the Department of Public Safety and Corrections in accordance with the Chapter; or

b. an organization of operators, consisting of two or more separate operators who jointly have underground facilities or utilities in three or more parishes in Louisiana, which is organized to protect its own installation from damage, and has been certified by the Department of Public Safety and Corrections in accordance with this Chapter; or

c. an operator who has underground facilities or utilities in a majority of parishes in Louisiana and is organized to protect its own installation from damage, and has been certified by the Department of Public Safety and Corrections in accordance with this Chapter.

*Service Line or Lines* underground facilities or utilities which provide power, gas, natural gas, communication or water capabilities to a building or structure of buildings or group of structures.

*Underground Facility or Utility* any pipe, conduit, duct, wire, cable, valve, line, fiber optic equipment, or other structure which is buried or placed below ground or submerged for the use in connection with storage, conveyance, transmission or protection of electronics communication system, telephone or telegraph system, or fiber optic, electric energy, oil, natural gas, gases, steam, mixture of gases, petroleum, petroleum products, hazardous or flammable fluids/gases, toxic or corrosive fluids/gases, hazardous fluids/gases or other substances of like nature or water or water systems, sewer systems, or traffic, drainage control systems, or other items of like nature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:92 (January 2000).

#### **§2105. Regional Notification Certification Process**

A. The regional notification program must have or be able to demonstrate the following:

1. toll free nationwide telephone number;
2. specifically defined geo-political service area with a goal of no overlap;
3. mechanism for law enforcement to verify locate request information;
4. establish a formal member contractual agreement and submit for approval;
5. locate request tracking process that includes a specific numbering system for each locate request;
6. provide timely transmission of notifications to facility owner/operator;
7. provide locate request information upon inquiry by law enforcement;
8. establish a process to handle emergency locate requests;
9. validation process for owner/operator member's map data base;
10. agree to participate in the Underground Utilities/Facilities Damage Prevention Advisory Committee;
11. develop standard operating procedures and training manuals for routine and emergency operations;
12. voice recording of all incoming locate request calls and voice out calls;
13. ability to produce records of all outgoing notification calls;
14. record retention procedures in compliance with R.S. 40:1749.13;

15. establish a pro-active public awareness and damage prevention education.

B. Upon establishing its ability to meet the above requirements, the regional notification center shall be certified by the Department.

C. The Department may charge a fee for the certification process of two thousand five hundred dollars.

D. An entity operating in this state as an authorized regional notification center prior to and upon the effective date of this Subsection shall have six months from the date of final adoption of these rules and regulations to seek and obtain compliance certification from the Department of Public Safety and Corrections. Failure to obtain such certification shall result in the cessation of activities by the regional notification center.

E. Any entity not operating in this state as an authorized regional notification center prior to and upon the effective date of this Subsection shall obtain compliance certification from the Department of Public Safety and Corrections prior to performing the operations of a regional notification center in or for this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:93 (January 2000).

#### **§2107. Citation**

The citation issued to a party alleged to be in violation of R. S. 40:1479 et seq. or these rules shall be uniform as developed by the Department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:93 (January 2000).

#### **§2109. Collection of Data by the Department**

The Department shall collect such data that will allow law enforcement agencies to determine the number of existing violations and the results of the adjudication process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:93 (January 2000).

#### **§2111. Establishment of Local Governmental Enforcement**

Pursuant to R. S. 40:1749.11 et seq. and these rules, local government shall have the authority to enforce any and all provisions therein, except the certification process for the regional notification center and the establishment of the uniform citation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:93 (January 2000).

#### **§2113. Civil Penalties**

A. A person who is required by this Part to become a member of, participate in, or share the cost of, a regional notification center and who fails to do so shall be subject to a civil penalty of not more than two hundred fifty dollars for the first violation and not more than one thousand dollars for each subsequent violation. A subsequent violation shall be

deemed to have occurred if the person fails to become a member of, participate in, or share the cost of, a regional notification center as required within ninety days after issuance of a citation for the previous violation.

B. A Person who participates in a regional notification center and who fails to mark or provide information regarding the location of underground utilities and facilities shall be subject to a civil penalty of not more than one thousand dollars. A subsequent violation shall be deemed to have occurred if a person fails to provide information or markings within two years of the issuance of a prior citation for the same or similar conduct.

C. A person who is required by law to participate in a regional notification center and who fails to provide information or markings to indicate hazardous material as defined in Title 30 of the Louisiana Revised Statutes of 1950 shall be subject to the following:

1. for the first violation, a civil penalty of not more than two hundred fifty dollars;
2. for a second violation, a civil penalty of not more than five hundred dollars;
3. for a third violation, a civil penalty of not more than one thousand dollars;
4. for a fourth and each subsequent violation, a civil penalty of not less than two thousand dollars nor more than twenty-five thousand dollars.

D. An excavator or demolisher who is unable to provide to law enforcement the locate request number assigned by the regional notification center for the specific excavation shall be considered to be in violation of R.S. 40:1749.13, shall stop all excavations immediately and shall be subject to the following:

1. for the first violation, a civil penalty of not more than two hundred fifty dollars;
2. for a second violation of a similar nature within a two-year period from the previous violation, a civil penalty of not more than five hundred dollars;
3. for a third violation of a similar nature within a two-year period from a previous violation, a civil penalty of not more than one thousand dollars;
4. for a fourth and each subsequent violation of a similar nature within a two-year period from the previous violation, a civil penalty of not less than two thousand dollars nor more than twenty-five thousand dollars;
5. for any violation involving hazardous materials as defined in Title 30 of the Louisiana Revised Statutes of 1950, a civil penalty of not less than two thousand dollars nor more than twenty-five thousand dollars;

6. an excavator or demolisher who is issued a citation for a violation shall immediately stop all excavation or demolition activity until the requirements of this Part are met. Failure to do so shall subject the excavator or demolisher to an additional citation and civil penalty of not more than twenty-five thousand dollars for each such subsequent citation issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:93 (January 2000).

#### **§2115. Report of Adjudication**

A. Proceedings and adjudication for the levying of civil penalties under this law shall be conducted by the division of

administrative law in accordance with regulations adopted pursuant to the Administrative Procedure Act.

B. A local governmental subdivision, except justice of the peace courts, enforcing the provisions of this part may establish a procedure for adjudication of violations and levying of civil penalties in accordance with the provisions of this Part. Such procedure shall include:

1. the fixing of a schedule of civil penalties and costs for the various offenses within the limits of such penalties as are set by law;
2. providing that any person cited for a violation of the provisions of this Part may plead guilty or no contest before an officer designated by the local governmental subdivision;
3. that the adjudication shall conform to the requirements of the Administrative Procedure Act;
4. the final report of adjudication issued pursuant to R.S. 40:1749.23(D) shall be sent within 30 days to the Department by certified mail return receipt requested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:94 (January 2000).

#### **§2117. Collection and Distribution of Fines or Civil Penalties: Underground Damages Prevention Fund**

A. All civil penalties shall be paid to the state treasury for credit to the Underground Damage Prevention Fund, and shall be disbursed as follows:

1. thirty-four percent shall be retained by the Underground Damages Prevention Fund;
2. upon request for disbursement by the agency, within one year of the civil penalty being deposited into the Underground Damages Prevention Fund, funds shall be disbursed as follows:
  - a. fifty percent shall be disbursed to the local law enforcement agency that issued the citation if the citation was adjudicated by the local governmental subdivision, or
  - b. fifty percent shall be disbursed to the state law enforcement agency that issued the citation if the citation was adjudicated by the state, or
  - c. twenty-five percent shall be disbursed to the local law enforcement agency that issued the citation and twenty-five percent retained in the fund if such citation was adjudicated by the state.

3. Upon request for disbursement by the local governing authority within one year of the civil penalty deposited into the Underground Damages Prevention Fund, sixteen percent shall be disbursed to the local governing authority of the area in which the violation occurred to be used solely for purposes of compliance with Louisiana Underground Utilities/Facilities Damage Prevention Law, if the local governing authority is a member of or participates in a regional notification center; otherwise, the amount shall be retained in the Underground Damages Prevention Fund.

4. If the local governing authority is not a member of nor participates in a regional notification center, but establishes and operates a violations bureau pursuant to R.S. 1749.23(D), then upon request for disbursement by the local governing authority within one year of the civil penalty deposited into the Underground Damage Prevention Fund, sixteen percent shall be disbursed to the local governing

authority for each violation adjudicated by the violations bureau of that local governing authority.

B. All funds received by the Department of Public Safety and Corrections under the provisions of this Part shall be retained in the Underground Damages Prevention Fund.

C. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited as required by Subsection B of this Section shall be credited to a special fund hereby created in the state treasury to be known as Underground Damages Prevention Fund. After disbursements as authorized in this Section, the monies in this fund shall be used solely as provided by Subsection D of this Section and only in the amounts appropriated by the legislature. All unexpended and unencumbered monies in this fund at the end of the fiscal year shall remain in such fund. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund and interest earned on the investment of these monies shall be credited to this fund, following compliance with the requirement of Article VII, Section 9(B) relative to the Bond Security and Redemption Fund.

D. The monies in the Underground Damages Prevention Fund shall be used by the Department of Public Safety and Corrections solely for enforcement of the provisions of the Louisiana Underground Utilities/Facilities Damage Prevention Law, and may include expenditure for information and programs designed to enhance awareness of duties and responsibilities of persons under the provisions of this statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:94 (January 2000).

Nancy Van Nortwick  
Undersecretary

0001#031

### **RULE**

#### **Department of Public Safety and Corrections Office of State Police**

##### **User Fees for Louisiana State Police Facility (LAC 55:I.301)**

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq. and R.S. 40:1375 (F), amends LAC 55:I.301, the rule setting user fees for the State Police Training Facilities.

#### **Title 55**

#### **PUBLIC SAFETY**

#### **Part I. State Police**

#### **Chapter 3. Training and Education Section**

#### **§301. User Fees for Louisiana State Police Facility**

The Louisiana State Police announces user fees effective January 20, 1999 for the Training Academy Facilities pursuant to R.S. 40:1375(F) according to the following schedules:

Academy Dorm Room		\$15.00 per day
VIP Dorm Room		\$20.00 per day
Large Flat Room	50 person capacity	\$75.00 per day
Large Tiered Room	50 person capacity	\$75.00 per day
Small Flat Room	40 person capacity	\$50.00 per day
Conference Room	15 person capacity	\$50.00 per day
Exercise Room	75 person capacity	\$150.00 per day
Auditorium	250 person capacity	\$250.00 per day
Gymnasium	250 person capacity	\$250.00 per day
Training Tank	50 person capacity	\$250.00 per day
Walker Firearms Range		\$250.00 per day
Firearms Range Classroom	50 person capacity	\$50.00 per day
Holden Small Classroom	25 person capacity	\$50.00 per day
Holden Large Classroom	45 person capacity	\$75.00 per day
Holden Facility Grounds		\$250.00 per day
Holden Site Usage		\$1,500.00 per day
Classroom Audio Visual Package*		\$40.00 per day
Computer Equipment		\$50.00 per day
Holden Cabin		\$20.00 per day
Video Production Service		\$2.00 - \$750.00 depending on requested service

\*Audio Visual Package consists of: Overhead Projector, Slide Projector, Projection Screen, VHS Video Cassette Player, Television Monitor, Carts and Necessary Cabling

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1375(F).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 12:116 (February, 1986), amended by the Department of Public Safety and Corrections, Office of State Police, LR 26:95 (January 2000).

Nancy Van Nortwick  
Undersecretary

0001#030

### **RULE**

#### **Department of Revenue Office of the Secretary**

##### **Refund Claims (LAC 61:I.4909)**

Under the authority of R.S. 47:1621, 1623, and 1625 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of the Secretary, has adopted LAC 61:I.4909 to provide for the manner of filing claims for refunds or credits of overpayments of tax, penalty or interest.

Revised Statute 47:1621 authorizes refunds of overpayments, R.S. 47:1623 pertains to prescription for filing claims for refunds or credits and authorizes the secretary of the Department of Revenue to prescribe the manner for filing refund claims, and R.S. 47:1625 pertains to appeals for disallowance of refund claims. This regulation establishes the procedures to be followed to properly submit claims for refunds or credits.

#### **Title 61**

#### **REVENUE AND TAXATION**

#### **Part I. Taxes Collected and Administered by the Secretary of Revenue**

#### **Chapter 49. Tax Collection**

#### **§4909. Refund Claims**

A. Taxpayers filing claims for refunds or credits of overpayments of tax, penalty or interest as authorized by

R.S. 47:1621 and in accordance with R.S. 47:1623 must comply with the following procedures.

1. A claim for refund or credit shall be written in the English language, and be:

- a. submitted on claims for refund/credit forms provided by the secretary; or
- b. written in a format substantially the same as that provided by the secretary; or
- c. submitted by timely filing an amended return.

2. A claim for refund shall be signed and dated by the taxpayer or his authorized representative, and shall;

- a. contain a clear statement detailing the reason for the claim;
- b. indicate the appropriate tax and tax amount by tax period; and
- c. be submitted to an appropriate office, division, or representative of the Department of Revenue. An "appropriate office, division, or representative of the Department of Revenue" means:
  - i. a Regional Service Center or Regional Audit Office;
  - ii. the appropriate division located at the department's headquarters in Baton Rouge;
  - iii. the Office of Alcohol and Tobacco Control for taxes or fees collected by that office;
  - iv. the tax collection officer assigned responsibility for the taxpayer's account for the period and tax related to the refund claim;
  - v. the field or office auditor that is examining the taxpayer's account for the period and tax related to the refund claim;
  - vi. the audit reviewer responsible for reviewing the audit file relating to the tax and tax period of the refund claim.

B. Claims for refund shall be approved or denied by the Secretary or his designee in accordance with written Departmental policy and procedures.

C. Claims for refunds that have not been approved within one year of the date received or that have been denied may be appealed by taxpayer to the board of tax appeals in accordance with R.S. 47:1625.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1621, 1623, and 1625.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of the Secretary, LR 26:95 (January 2000).

Brett Crawford  
Secretary

0001#024

## **RULE**

### **Department of Social Services Office of Community Services**

#### **Maintenance of Information on Reports and Investigations (LAC 67:V.1105)**

The Department of Social Services, Office of Community Services, is adopting a rule regarding the maintenance of information regarding reports of child abuse and/or neglect with investigation final findings of inconclusive. This rule is

based on Act 593 of the 1999 Session of the Louisiana Legislature.

## **Title 67**

### **SOCIAL SERVICES**

#### **Part V. Office of Community Services**

##### **Subpart 3. Child Protective Services**

##### **Chapter 11. Administration and Authority**

##### **§1105. Maintenance of Information on Reports and Investigations**

A. The Office of Community Services will maintain information on reports of child abuse and/or neglect with final findings of inconclusive on the computer tracking and management system (TIPS) for three years after the determination of the finding. The information will be maintained for the exclusive use of child protection investigators in the course of investigations for the purpose of evaluating the existence of patterns of incidents in pending child abuse or neglect investigations. The information regarding the report and the inconclusive finding shall be confidential and will not be released to other persons or agencies outside of the Office of Community Services.

1. At the end of three years the information will be expunged unless there have been subsequent reports with final findings of inconclusive or valid. When there are subsequent investigations with findings of inconclusive, the information regarding all inconclusive findings will be maintained until there have been no subsequent inconclusive findings for three years. When there are subsequent reports with findings of valid for which a previous inconclusive report was used as part of the basis for the valid finding, the information on inconclusive findings will be maintained until the information on the valid findings is expunged.

B. The case record file of information on the reports and investigations with inconclusive findings will be maintained in the local office for the parish in which the investigation was conducted. The file will be maintained for three years from the date of the determination of the inconclusive finding. At the end of three years the case record will be destroyed in accordance with the completion of state and federal audits.

1. When there are subsequent investigations with findings of inconclusive, the case records for all inconclusive findings will be maintained until there have been no subsequent inconclusive findings for three years. When there are subsequent reports with findings of valid for which the information from the inconclusive report is used as part of the basis for the related valid report, the information on the report and investigation with the inconclusive findings will be included in the file on the valid findings.

AUTHORITY NOTE: Promulgated in accordance with Act 593 of 1999.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 26:96 (January 2000).

J. Renea Austin-Duffin  
Secretary

0001#055

**RULE**

**Department of Transportation and Development  
Office of the Secretary  
Crescent City Connection Division**

Bridge Toll Exemptions  
Crescent City Connection  
Law Enforcement Personnel  
(LAC 70:I.513)

The Department of Transportation and Development, Crescent City Connection Division, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended LAC 70:I.513 to include enforcement division agents of the Louisiana Department of Wildlife and Fisheries within the definition of law enforcement personnel for purposes of toll exemptions.

**Title 70**

**TRANSPORTATION AND DEVELOPMENT**

**Part I. Office of the General Counsel**

**Chapter 5. Tolls**

**§513. Crescent City Connection Exemptions  
Law Enforcement Personnel**

A. Free passage across the Crescent City Connection, Sunshine Bridge, and the ferries known as Algiers/Canal Street, Gretna/Jackson Avenue, Lower Algiers/Chalmette shall be granted to all law enforcement personnel who are employed on a full-time basis and have law enforcement agency equipment.

B. Law enforcement agency for purposes of R.S. 40:1392 shall mean any agency of the State or its political subdivisions and the Federal Government, who are responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this State or similar federal laws and who are employed in this State. Officers who serve in a voluntary capacity or as honorary officers are not included.

C. Agencies which meet the above criteria shall include the Louisiana State Police, enforcement division agents of the Louisiana Department of Wildlife and Fisheries, sheriff's departments of the parishes of this state, municipal police departments, levee board police departments, port police departments, and Federal Bureau of Investigation exclusively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:25 et seq., and R.S. 40:1392.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 23:84 (January 1997), amended LR 26:97 (January 2000).

Alan J. LeVasseur  
Executive Director

0001#001

**RULE**

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

Black Bass Regulations  
Lake Bartholomew  
(LAC 76:VII.149)

The Wildlife and Fisheries Commission hereby amends the following rule on black bass (*Micropterus spp.*) on Lake Bartholomew, located in Morehouse and Ouachita Parishes, Louisiana.

**Title 76**

**Wildlife and Fisheries**

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

**Chapter 1. Freshwater Sports and Commercial Fishing**

**§149. Black Bass Regulations-Daily Take and Size Limits**

A. The Wildlife and Fisheries Commission establishes a statewide daily take (creel limit) of 10 fish for black bass (*Micropterus spp.*). The possession limit shall be the same as the daily take on water and twice the daily take off water.

B. In addition, the Commission establishes special size and daily take regulations for black bass on the following water bodies

1. Concordia Lake (Concordia Parish), and Caney Creek Reservoir (Jackson Parish):

a. Size limit: 15 inch - 19 inch slot. A 15 - 19 inch slot limit means that it is illegal to keep or possess a black bass whose maximum total length is between 15 inches and 19 inches, both measurements inclusive.

b. Daily take: eight fish of which no more than two fish may exceed 19 inches maximum total length.\*

c. Possession limit:

i. On water - Same as daily take.

ii. Off water - Twice the daily take.

2. Black Bayou Lake (Bossier Parish), Chicot Lake (Evangeline Parish), Cross Lake (Caddo Parish), John K. Kelly-Grand Bayou Reservoir (Red River Parish), Lake Rodemacher (Rapides Parish) and Vernon Lake (Vernon Parish):

a. Size Limit: 14 inch - 17 inch slot. A 14 - 17 inch slot limit means that it is illegal to keep or possess a black bass whose maximum total length is between 14 inches and 17 inches, both measurements inclusive.

b. Daily Take: eight fish of which no more than four fish may exceed 17 inches maximum total length.\*

c. Possession limit:

i. On water - Same as daily take.

ii. Off water - Twice the daily take.

3. False River (Pointe Coupee Parish)
  - a. Size limit: 14 inch minimum size limit.
  - b. Daily Take: 5 fish.
  - c. Possession limit:
    - i. On water - Same as daily take.
    - ii. Off water - Twice the daily take.

\*Maximum total length - The distance in a straight line from the tip of the snout to the most posterior point of the depressed caudal fin as measured with mouth closed on a flat surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6 (25)(a), R.S. 56:325(C), R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 14:364 (June 1988), amended LR 17:278 (March 1991), repromulgated LR 17:488 (May 1991), amended LR 17:1122 (November 1991), LR 20:796 (July 1994), LR 23:1168 (September 1997), LR 24:505 (March 1998), LR 26:97 (January 2000).

Thomas M. Gattle, Jr.  
Chairman

00001#47

### **RULE**

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

##### **Freshwater Mullet Harvest (LAC 76:VII.193)**

The Wildlife and Fisheries Commission hereby adopts the following rule on the harvest of mullet.

### **Title 76**

#### **WILDLIFE AND FISHERIES**

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

#### **Chapter 1. Freshwater Sports and Commercial Fishing**

#### **§193. Freshwater Harvest of Mullet**

A. Recreational Limits. The daily take and possession limit for the recreational harvest of mullet shall be 100 pounds per person per day. No person shall take or possess mullet in excess of 100 pounds per day, except for legally licensed commercial fishermen. No person shall sell, barter, trade or exchange or attempt to sell, barter, trade or exchange mullet taken or possessed recreationally.

B. Commercial; Freshwater Areas. The following provisions govern the commercial taking of mullet with hoop nets in the freshwater areas of the state.

1. Mullet caught in the freshwater areas of the state shall not be possessed by commercial fishermen in the saltwater areas of the state.

2. There shall be no lead nets on hoop nets used for the fishing of mullet.

3. No person shall take or possess mullet from hoop nets between the hours of official sunset and official sunrise.

4. No mullet shall be possessed on the water in the freshwater areas of the state between the hours of official sunset and official sunrise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:325.1.A(1) and R.S. 56:333.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 26:98 (January 2000).

Thomas M. Gattle, Jr.  
Chairman

0001#050