

# Emergency Rules

## DECLARATION OF EMERGENCY

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

#### Scholarship/Grant Programs

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

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

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

This declaration of emergency is effective December 18, 2001, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

#### Title 28

#### EDUCATION

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

#### Chapter 3. Definitions

#### §301. Definitions

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

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

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

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

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

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

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

**HISTORICAL NOTE:** Promulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR26:1262 (June 2000), LR 26:1601 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November), LR 28:

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

#### §703. Establishing Eligibility

A. ...

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

2. - 6.c. ...

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

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

B. - G.2. ...

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

HISTORICAL NOTE: Promulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602, 1998 (August 2000), LR 26:1996, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), LR 27:1850 (November 2001), LR 28:

**§705. Maintaining Eligibility**

A. - A.2. ...

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

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

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

6. Minimum Academic Progress:

a. in an academic program at an Eligible College or University, by the end of each Academic Year (College), earn a total of at least 24 college credit hours as determined by totaling the earned hours reported by the institution for each semester or quarter in the Academic Year (College). These hours shall include remedial course work required by the institution, but shall not include hours earned during Qualified Summer Sessions, summer sessions nor intersessions nor by advanced placement course credits. Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility; or

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

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

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

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

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

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

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

10. has not received a baccalaureate degree; and

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

B. - D. ...

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

HISTORICAL NOTE: Promulgated LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999); LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26, 1996, 2001 (September 2000), LR 27:1853 (November 2001), LR 28:

**Chapter 8. TOPS-TECH Award**

**§803. Establishing Eligibility**

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

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

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

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

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

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

- OPTION 1 Total of 17 units.
- 1 Fine Arts Survey or substitute two units of performance courses in music, dance, or theater; or substitute two units of visual art courses; or substitute two units of studio art courses; or a course from the career and technical program of studies that is approved by the BESE (must be listed under the Vocational Education Course Offerings in Bulletin 741 or the updates to Bulletin 741); or substitute one unit as an elective from among the other subjects listed in this core curriculum.
- 2 Foreign Language, Technical Writing, Speech I or Speech II.
- 1 One unit from the secondary computer education program of studies that is approved by the BESE.

- OR
- OPTION 2 Total of 19 Units
- 4 In a career major comprised of a sequence of related specialty courses. In order for a student to use this option, the courses for the career major must be approved by BESE.
- 1 Credit in a basic computer course.
- 1 In related or technical fields. A related course includes any course which is listed under the student's major. A technical course is one that is listed in the approved career option plan for the high school at which the course is taken.

or

iii. ...

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

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

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

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:1898 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65, 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), LR 27:1854 (November 2001), LR 28:

### §805. Maintaining Eligibility

A. - A.2. ...

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

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

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

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

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

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

B. ...

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

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

### Chapter 9. TOPS Teacher Award §903. Establishing Eligibility

A. - A.5. ...

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

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

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

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

HISTORICAL NOTE: Promulgated LR 24:637 (April 1998), amended LR 24:1906 (October 1998), LR 26:68 (January 2000), LR 26:2269 (October 2000), LR 27:284 (March 2001), LR 27:1220 (August 2001), repromulgated LR 27:1857 (November 2001), amended LR 28:, LR 28:

### §907. Maintaining Eligibility

A. - A.7. ...

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

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

HISTORICAL NOTE: Promulgated LR 24:638 (April 1998), amended LR 24:1907 (October 1998), LR 25:1092 (June 1999), LR 26: (January 2000), LR 26: (April 2000), repromulgated LR 27:1857 (November 2001), amended LR 28:

### §911. Discharge of Obligation

A. - C.1. ...

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

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

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

HISTORICAL NOTE: Promulgated LR 24:638 (April 1998), amended LR 24:1907 (October 1998), amended LR 26:69 (January 2000), LR 26:1603 (August 2000), LR 27:1858 (November 2001), LR 28:

### Chapter 11. Rockefeller State Wildlife Scholarship §1103. Establishing Eligibility

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

1. - 4. ...

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated LR 24:639 (April 1998), amended LR 24:1908 (October 1998), LR 27:1220 (August 2001), repromulgated LR 27:1859 (November 2001), amended LR 28:

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

A. - C.1. ...

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

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

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

HISTORICAL NOTE: Promulgated LR 24:640 (April 1998), amended LR 24:1909 (October 1998), repromulgated LR 27:1860 (November 2001), amended LR 28:

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

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

A. - B.1. ...

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

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

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

E. - E.2. ...

3. cumulative grade point average; and

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

F. - G. ...

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

HISTORICAL NOTE: Promulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998, 2002 (September 2000), LR 27:1864 (November 2001), LR 28:

#### **Chapter 21. Miscellaneous Provisions and Exceptions §2103. Circumstances Warranting Exception to the Initial and Continuous Enrollment Requirements**

A. - B. ...

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

1. - 3. ...

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

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

2. - 3. ...

E. Qualifying Exceptions to the Initial and Continuous Enrollment Requirement

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

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

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

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

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

HISTORICAL NOTE: Promulgated LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1017 (May 2000), LR 26:2004 (September 2000), LR 27:37 (January 2001), LR 27:1875 (October 2001), LR 27:1866 (November 2001), LR 28:

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

A. ...

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

1. Parental Leave

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

b. Certification Requirements. The recipient must submit:

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

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

2. Physical Rehabilitation Program

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

b. Certification Requirements. The recipient must submit:

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

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

3. Substance Abuse Rehabilitation Program

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

b. Certification Requirements. The recipient must submit:

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

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

4. Temporary Disability

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

b. Certification Requirements. The recipient must submit:

- i. a completed deferment request form, the reason for the disability, dates of absence from work, the number of days involved, and any other information or documents, and
- ii. a written statement from a qualified professional of the existence and of the accident, injury, illness or required surgery, including the dates of treatment, the treatment required, the prognosis, the length of the recovery period, the beginning and ending dates of the doctor's care, and opinions as to the impact of the disability on the recipient's ability to work; and
- iii. if a temporary disability of another, a statement from the family member or a qualified professional confirming the care given by the recipient.

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

5. Religious Commitment

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

b. Certification Requirements. The recipient must submit:

- i. a completed deferment request form, the number of days involved, and the length of the religious obligation, and
- ii. a written statement from the religious group's governing official evidencing the requirement necessitating the leave of absence including dates of the required leave of absence.

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

6. Military Service

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

b. Certification Requirements. The recipient must submit:

- i. a completed deferment request form and the length of duty (beginning and ending dates), and
- ii. a written certification from the commanding officer or regional supervisor including the dates and location of active duty, or
- iii. a certified copy of the military orders.

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

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

8. Recipient is:

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

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

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

D. Procedure for Requesting a Deferment

1. The recipient should complete and submit an application for a deferment, with documentary evidence, to the Office as soon as possible after the occurrence of the event or circumstance that supports the request. The recipient must submit the application for deferment no later than three months after the date of the notice of repayment. The deadline for filing the request shall be prominently displayed on the notice of repayment.

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

E. Conditions of Deferment

1. Deferments may be subject to the following conditions:

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

b. Agreement to give notice that the condition or circumstance that warranted the deferment has ceased,

c. Agreement to a repayment schedule commencing on expiration of the deferment,

d. Agreement to acknowledge debt,

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

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

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

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

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

1. death of the recipient;

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

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

HISTORICAL NOTE: Promulgated LR 24:649 (April 1998), amended LR 24:1918 (October 1998), LR 26:1603 (August 2000), repromulgated LR 27:1868 (November 2001), amended LR 28:

§2107. Fundi ng and Fees

A. - A.2. ...

B. Less than Full-Time Attendance. The LASFAC will authorize awards under the TOPS Opportunity, Performance, Honors and Teachers Awards for less than full-time

enrollment provided that the student meets all other eligibility criteria and the requirements of §2103.C.

C. - E. ...

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

HISTORICAL NOTE: Adopted 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). Promulgated LR 24:649 (April 1998), amended LR 24:1919 (October 1998), LR 26:1998 (September 2000), repromulgated LR 27:1869 (November 2001), amended LR 28:

Chapter 23. Tuition Payment Program for Medical School Students

§2303. Establishing Eligibility

A.-A.5. ...

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

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

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

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

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

§2309. Maintaining Eligibility

A.-A.4. ...

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

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1462 (August 1999), repromulgated LR 27:1873 (November 2001), LR 28:

George Badge Eldredge  
General Counsel

0201#007

DECLARATION OF EMERGENCY

Office of Student Financial Assistance  
Tuition Trust Authority

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

The Louisiana Tuition Trust Authority (LATTA) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091-3099.2).

The emergency rules are necessary to allow the Louisiana Office of Student Financial Assistance to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The authority has, therefore, determined that these

emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective December 18, 2001, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

**Title 28  
EDUCATION**

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

**Chapter 1. General Provisions  
Subchapter A. Student Tuition Trust Authority**

**§107. Applicable Definitions**

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

\*\*\*

*Louisiana ResidentC*

1. - 4. ...

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

\*\*\*

*Qualified Higher Education ExpensesC*

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

2. room and board; and

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

\*\*\*

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

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

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October

1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:

**Chapter 3. Education Savings Account**

**§301. Education Savings Accounts**

A. - C.3. ...

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

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

b. ...

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

d. In the event of the dissolution of an account owner who is a legal entity, the beneficiary shall become the substitute account owner. If the account owner is dissolved, the beneficiary designated to receive the refund has died, and there is no substitute beneficiary named, the refund shall be made to the beneficiary's estate.

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

D.1 - 6.c. ..

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

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

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

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

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

E. - E.2. ...

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

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

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

3. By signing the owners agreement,
  - a. the account owner who is a natural person certifies that:
    - i. both account owner and beneficiary are United States Citizens or permanent residents of the United States as defined by the U.S. Immigration and Naturalization Service (INS) and, if permanent residents have provided copies of INS documentation with the submission of the application and owners agreement, and
    - ii. the information provided in the application is true and correct.
  - b. the person signing on behalf of an account owner who is a legal entity certifies that:
    - i. the account owner is a legal entity as defined in rule and the application;
    - ii. he or she is the designated agent of the legal entity;
    - iii. he or she is authorized to take any action permitted the account owner;
    - iv. the account owner acknowledges and agrees that once funds are deposited in a START account, neither the deposits nor the interest earned thereon can be refunded to the account owner,
    - v. the information provided in the application is true and correct, and
    - vi. if the beneficiary is not a Louisiana resident, the legal entity fulfills the definition of Louisiana resident as found in rule and the application.

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

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

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

**§303. Account Owner Classifications**

A. - B. ...  
 C. Account owner classification is made at the time of the initiation of the agreement. Changes in the residency of the account owner or beneficiary after the initiation of the agreement do not change the account owners classification.

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

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

**§307. Allocation of Earnings Enhancements**

A. - A.2. ...  
 B. Providing Proof of Annual Federal Adjusted Gross Income

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

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

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

H. - J.3. ...  
 AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

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

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

A. - A.3. ...  
 B. Account Terminations  
 1. The account owner who is a natural person may terminate an account at any time.

2.- 5. ...  
 6. The account owner who is a Legal Entity may not terminate an account, except in accordance with §311.F, however, the account owner who is a legal entity may designate a substitute beneficiary in accordance with §313.F.

C.- C.2. ...  
 3. No refunds shall be made to an account owner who is a legal entity. If an account owned by a legal entity is terminated by LATTA or the account owner in accordance with §311.F, the refund will be made to the beneficiary or to the beneficiary's estate if no substitute beneficiary has been designated by the account owner.

D. Designation of a Refund Recipient  
 1. In the owners agreement, the account owner who is a natural person may designate the Beneficiary to receive refunds from the account.

D.2.-3. ...  
 4. The beneficiary of an account owned by a legal entity is automatically designated as the refund recipient.

E. - E.3. ...  
 F. Voluntary termination or partial refund of an account without penalty prior to January 1, 2002. No penalty will be assessed for accounts which are terminated and fully refunded or partially refunded at the request of the Account Owner prior to January 1, 2002 due to the following reasons:

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

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

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

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office Environmental Assessment Environmental Planning Division

#### Control of Nitrogen Oxides Emissions (LAC 33:III.2201) (AQ 215E)

Editor's Note: Section 2201 of this Emergency Rule is being repromulgated to correct equations within the text. The original Emergency Rule may be viewed on pages 2049-2063 of the December 20, 2002 edition of the *Louisiana Register*.

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

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

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

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

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

G. - G.3. ...

H. Voluntary termination of an account after december 31, 2001

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

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

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

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

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

A. - A.3. ...

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

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

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

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

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

B. - C.5. ...

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

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

George Badge Eldredge  
General Counsel

0201#008

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality (Department) to use emergency procedures to establish rules, and R.S. 30:2011, the secretary of the Department hereby finds that imminent peril to the public welfare exists and accordingly adopts the following emergency rules effective December 20, 2001, for 120 days, or until promulgation of the final rules, whichever occurs first.

This action is necessary to meet the requirements of the United States Environmental Protection Agency (EPA) for granting an extension of the attainment date to prevent the reclassification from "serious" to "severe" of the Baton Rouge ozone nonattainment area. This area includes the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge.

The State of Louisiana has requested an extension of the attainment date imposed by the 1990 amendments to the Clean Air Act, pursuant to EPA's transport policy. The state has committed to the EPA to submit the necessary documentation to demonstrate transport and revisions to the State Implementation Plan (SIP) by December 31, 2001. The EPA has provided notice in the *Federal Register* of its intent to review and possibly grant such extension request when submitted or in the alternative to reclassify the Baton Rouge nonattainment area. Failure to submit the transport demonstration and revisions to the SIP would result in the Baton Rouge nonattainment area being reclassified from "serious" to "severe." A reclassification would have detrimental effects on the operations of the department, the local economy, and the citizens of the area without any significant benefit, including improved air quality. Several other parties, including local governments, trade organizations, and industry, have expressed agreement with such conclusion.

The proposed SIP revision involves the adoption of certain new rules, including the adoption of air pollution control standards for emissions of oxides of nitrogen (NO<sub>x</sub>) and revisions to the existing emission reduction credits banking regulations. These rules were proposed in accordance with regular rulemaking procedures on July 20, 2001, as AQ211 (LAC 33:III.Chapter 6C Banking) and on August 20, 2001, as AQ215 (LAC 33:III.Chapter 22CNO<sub>x</sub>). During the comment period for the proposed rules the department received significant public comment and, as a result, is proposing substantive changes to these rules, as AQ211S and AQ215S.

In order that the transport demonstration and revisions to the SIP may be submitted to the EPA in accordance with the

commitment previously made, the department hereby adopts Emergency Rules AQ211E and AQ215E. The Emergency Rules include the proposed rule language that has been modified to include substantive amendments. The Emergency Rules shall be effective for 120 days or until promulgation of final Rules AQ211S and AQ215S, whichever occurs first.

Adopted this 10th day of December, 2001.

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

**Chapter 22. Control of Emissions of Nitrogen Oxides (NO<sub>x</sub>)**

**§2201. Affected Facilities in the Greater Baton Rouge NO<sub>x</sub> Control Area**

**A. Applicability**

1. The provisions of this Chapter shall apply to any affected facility in the Greater Baton Rouge NO<sub>x</sub> Control Area (i.e., the entire parishes of Ascension, East Feliciana, East Baton Rouge, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana).

2. The provisions of this Chapter shall apply during the ozone season (May 1 to September 30) of each year.

3. All affected facilities shall be in compliance as expeditiously as possible, but by no later than the dates specified in Subsection J of this Section.

**B. Definitions.** Unless specifically defined in this Subsection or in LAC 33:III.111 or 502, the words, terms, and abbreviations in this Chapter shall have the meanings commonly used in the field of air pollution control. For purposes of this Chapter only, the following definitions shall supersede any definitions in LAC 33:III.111 or 502.

**Administrator**—the administrator, or an authorized representative, of the U. S. Environmental Protection Agency (EPA).

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

**Affected Facility**—any facility within the Greater Baton Rouge NO<sub>x</sub> Control Area with one or more affected point sources that collectively emit or have the potential to emit 50 tons or more per year of NO<sub>x</sub>, unless exempted in Subsection C of this Section.

**Affected Point Source**—any point source located at an affected facility and subject to an emission factor listed in Paragraph D.1 of this Section or used as part of an alternative plan in accordance with Subsection E of this Section, unless exempted in Subsection C of this Section.

**Ammonia Reformer**—a type of process heater/furnace located in an ammonia production plant that is designed to heat a mixture of natural gas and steam to produce hydrogen and carbon oxides.

**Averaging Capacity**—the average actual heat input rate in MMBtu/hour at which an affected point source operated during the ozone season of the two calendar years of 2000 and 2001. Another period may be used to calculate the averaging capacity if approved by the department. For units with permit revisions that legally curtailed capacity or that were permanently shutdown after 1997, the averaging capacity is the average actual heat input during the last two ozone seasons of operation before the curtailment or shutdown.

**Biomass**—defined as bagasse, rice-husks, wood, or other combustible, vegetation-derived material that is suitable for use as fuel.

**Boiler**—any combustion equipment fired with any solid, liquid, and/or gaseous fuel that is primarily used to produce steam, or heat water, or any other heat transfer medium for power generation or for heat to an industrial, institutional, or commercial operation. Equipment that is operated primarily for waste treatment and that incidentally produces steam shall not be regulated under this Chapter as a boiler.

**Cap**—a system for demonstrating compliance whereby an affected facility, a subset of affected sources at an affected facility, or a group of affected facilities under common control are operated to stay below a mass emission rate expressed as mass per unit of time. The allowable mass emission rate is calculated by adding the allowable emissions for each affected point source. The allowable emission is the product of the source's averaging capacity and the applicable factor in Paragraph D.1 of this Section.

**Chemical Processing Gas Turbine**—a gas turbine that vents its exhaust gases into the operating stream of a chemical process.

**Coal**—all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials, Designation D388-77. For the purposes of this Chapter, coal shall also include petroleum coke, solid carbon residues from the processing of petroleum products and coal-derived synthetic fuels, including but not limited to, solvent refined coal, coal-oil mixtures, and coal-water mixtures.

**Combined Cycle**—a combustion equipment configuration that generates electrical power with a stationary gas or liquid-fired turbine and/or a stationary internal combustion engine and that recovers heat from the discharge within equipment to heat water or generate steam.

**Continuous Emissions Monitoring System (CEMS)**—the total equipment used to sample and condition, if applicable, to analyze, and to provide a permanent record of emissions or process parameters.

**Daily Average**—an average of the hourly data for one calendar day starting at 12-midnight and continuing until the following 12-midnight.

**Department**—the Louisiana Department of Environmental Quality.

**Elapsed Run-Time Meter**—an instrument designed to measure and record the time that an affected point source has run during a designated period.

**Electric Power Generating System**—all boilers, stationary internal combustion engines, stationary gas turbines, and other combustion equipment within an affected facility that are used to generate electric power and that are owned or operated by a municipality, an electric cooperative, an independent power producer, a public utility, or a Louisiana Public Service Commission regulated utility company, or any of its successors.

**Emergency Standby Gas Turbine or Engine**—a gas turbine or engine operated as an electrical or a mechanical power source for an affected facility when the primary source has been disrupted or discontinued during an emergency due to circumstances beyond the control of the owner or operator of the affected facility and that is operated only during such an emergency or when normal testing

procedures, as recommended by the manufacturer, are being performed. The definition includes a stationary gas turbine or a stationary internal combustion engine that is used at a nuclear power plant as an emergency generator that is subject to Nuclear Regulatory Commission (NRC) regulations and a stationary internal combustion engine that is used for the emergency pumping of water for either fire protection or flood relief. This term does not include an electric generating unit in peaking service.

*Facility*—a contiguous area under common control that contains various types of equipment that emit or have the potential to emit NO<sub>x</sub>.

*Facility-Wide Averaging Plan*—an alternative emission plan whereby an affected facility (or affected facilities with a common owner or operator) with multiple affected point sources of NO<sub>x</sub> emissions achieves the required reduction by a different mix of controls from that mandated by Subsection D of this Section. Some affected point sources may be over-controlled (more restrictive than the regulation) or shutdown in order to offset other affected point sources that are under-controlled (less restrictive than the regulation) or not controlled, provided the required overall NO<sub>x</sub> reduction is met.

*Facility-Wide Emission Factor*—the total average allowable NO<sub>x</sub> emission factor in pound NO<sub>x</sub>/MMBtu for affected point sources when firing at their averaging capacities.

*F Factor*—the ratio of the gas volume of the products of combustion to the heat content of the fuel, typically expressed in dry standard cubic feet (dscf) per MMBtu.

*Flare*—a type of equipment specifically designed for combusting gaseous vents at an above-ground location.

*Fluid Catalytic Cracking Unit Regenerator*—a unit in a refinery where catalyst is recovered (regenerated) by burning off coke and other deposits with hot air. The term includes the associated equipment for controlling air pollutant emissions and for heat recovery.

*Gas*—any gaseous substance that can be used as a fuel to create heat and/or mechanical energy including natural gas, synthetically produced gas from coal or oil, gaseous substances from the decomposition of organic matter, and gas streams that are by-products of a manufacturing process.

*Greater Baton Rouge NO<sub>x</sub> Control Area*—an area around Baton Rouge where NO<sub>x</sub> controls are being implemented under this Chapter. The area consists of the entire parishes of Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana.

*Heat Input*—the heat released due to fuel combustion in an affected point source, using the higher heating value of the fuel, excluding the sensible heat of the incoming combustion air.

*Higher Heating Value*—a measurement of the heat evolved during the complete combustion of a substance, including the latent heat of condensation of any water that is produced.

*Horsepower Rating*—the engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.

*Incinerator*—any combustion equipment, with or without heat recovery, that is designed and operated

primarily for the treatment of gaseous and/or liquid waste. If waste treatment is an incidental part of the operation, the unit shall not be classified as an incinerator. An example of incidental use is when a waste stream is injected into a boiler, process heater/furnace, or other piece of process combustion equipment and the waste streams contribute less than 50 percent of the total heat input. A device classified as a boiler or industrial furnace in accordance with LAC 33:V.Chapter 30 is not an incinerator.

*International Standards Organization (ISO) Conditions*—standard conditions of 59<sup>0</sup>F, 1.0 atmosphere, and 60 percent relative humidity.

*Kilns and Ovens*—combustion equipment used for drying, baking, cooking, and calcining. Kilns can also be used for the treatment of solid wastes.

*Lean-Burn Engine*—a spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is not capable of being operated with an exhaust stream oxygen concentration equal to or less than 1.0 percent, by volume on a dry basis, as originally designed by the manufacturer. The exhaust gas oxygen concentration shall be determined from the uncontrolled exhaust stream.

*Liquid Fuel*—any substance in a liquid state that can be used as a fuel to create heat and/or mechanical energy including:

- a. crude oil, petroleum oil, fuel oil, residual oil, distillate, or other liquid fuel derived from crude oil or petroleum;
- b. liquid by-products of a manufacturing process or a petroleum refinery; and
- c. any other liquid fuel.

*Low Ozone Season Capacity Factor Boiler or Process Heater/Furnace*—a boiler or process heater/furnace with maximum rated capacity greater than or equal to 80 MMBtu/hour and ozone season heat input less than or equal to 0.92 x 10<sup>11</sup> Btu.

*Malfunction*—any sudden and unavoidable failure, as defined in LAC 33:III.111.

*Maximum Rated Capacity*—the maximum annual design capacity, as determined by the equipment manufacturer or as proven by actual maximum annual performance in the field, unless the affected point source is limited by permit condition to a lesser annual capacity, in which case the limiting condition shall be used as the maximum rated capacity. Where the capacity of a point source is limited by an operating cap applicable to a group of point sources (e.g., several units capped to a combined total firing rate), the total firing rate cap shall be divided by the number of point sources in the cap to arrive at an equivalent maximum rated capacity. This equivalent maximum rated capacity shall be used to determine the applicability of the emission factors and monitoring provisions of this Chapter.

*Megawatt (MW) Rating*—the continuous power rating or mechanical equivalent by a stationary gas turbine manufacturer at ISO conditions, without consideration to the increase in turbine shaft output and/or decrease in turbine fuel consumption by the addition of energy recovered from exhaust heat.

*Nitric Acid Production Unit*—a facility that produces nitric acid by any process.

*Nitrogen Oxides (NO<sub>x</sub>)*—the sum of the nitric oxide and nitrogen dioxide in a stream, collectively expressed as nitrogen dioxide.

*Nonattainment Parish*—in Louisiana, the parishes of Ascension, East Baton Rouge, Iberville, Livingston, or West Baton Rouge.

*Number 6 Fuel Oil*—fuel oil of the grade that is classified number 6, according to ASTM Standard Specification for classification of fuel oil by ASTM D396-84.

*Ozone Season*—May 1 to September 30, inclusively.

*Peaking Service*—a stationary gas turbine or stationary internal combustion engine that is operated intermittently to produce energy. To be in peaking service, the annual heat input or horsepower-hours for the affected point source shall be less than the product of 2500 hours and the MW rating of the turbine or the horsepower rating of the engine.

*Permanent Shutdown*—a shutdown lasting for two years or more or resulting in the removal of the source from the department emissions inventory.

*Predictive Emissions Monitoring System (PEMS)*—a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

*Process Heater/Furnace*—any combustion equipment fired with solid, liquid, and/or gaseous fuel that is used to transfer heat to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term process heater/furnace does not apply to any unfired waste heat recovery boiler that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers as defined in this Subsection.

*Pulp Liquor Recovery Furnace*—either a straight Kraft recovery furnace or a cross recovery furnace as defined in 40 CFR 60 subpart BB.

*Rich-Burn Engine*—all stationary reciprocating engines that do not fit the definition of lean-burn.

*Sensible Heat*—the heat energy stored in a substance as a result of an increase in its temperature.

*Stationary Gas Turbine*—any turbine system that is gas and/or liquid fuel fired and that is either attached to a foundation at an affected facility or is portable equipment operated at a specific affected facility for more than 60 days in any ozone season.

*Stationary Internal Combustion Engine*—a reciprocating engine that is either gas and/or liquid fuel fired and that is either attached to a foundation or is portable equipment operated at a specific affected facility for more than six months at a time. This term does not include locomotive engines or self-propelled construction engines.

*Supplemental Firing Unit*—a unit with burners that is installed in the exhaust duct of a stationary gas turbine or internal combustion engine for the purpose of supplying supplemental heat to a downstream heat recovery unit.

*Thirty-Day (30-Day) Rolling Average*—an average, calculated for each day that fuel is combusted, of hourly emissions data for the preceding 30 days that fuel is combusted in an affected point source.

*Totalizing Fuel Meter*—a meter or metering system that provides a cumulative measure of fuel consumption.

*Trading Allowances*—the tons of NO<sub>x</sub> emissions that result from over-controlling, permanently reducing the operating rate of, or permanently shutting down, an affected point source located within the Greater Baton Rouge NO<sub>x</sub> Control Area. The allowances are determined in accordance with LAC 33:III.Chapter 6 and from the emission factors required by Subsection D of this Section for the affected point source and the enforceable emission factor assigned by the owner or operator in accordance with Subsection E of this Section. Trading allowances will be granted only for reductions that are real, quantifiable, permanent, and federally enforceable. NO<sub>x</sub> reductions that are used in a facility-wide averaging plan cannot be also used in a trading plan.

*Wood*—wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

C. Exemptions. The following categories of equipment or processes located at an affected facility within the Greater Baton Rouge NO<sub>x</sub> Control Area are exempted from the provisions of this Chapter:

1. boilers and process heater/furnaces with a maximum rated capacity of less than 80 million British thermal units (MMBtu) per hour;
2. stationary gas turbines with a megawatt rating based on heat input of less than 10 megawatts (MW);
3. stationary internal combustion engines as follows:
  - a. rich-burn engines with a rating of less than 300 horsepower (Hp); and
  - b. lean-burn engines with a rating of less than 1500 Hp;
4. low ozone season capacity factor boilers and process heater/furnaces, in accordance with Paragraph H.11 of this Section;
5. stationary gas turbines and stationary internal combustion engines, that are:
  - a. used in research and testing;
  - b. used for performance verification and testing;
  - c. used solely to power other engines or turbines during start-ups;
  - d. operated exclusively for fire fighting or training and/or flood control;
  - e. used in response to and during the existence of any officially declared disaster or state of emergency;
  - f. used directly and exclusively for agricultural operations necessary for the growing of crops or the raising of fowl or animals; or
  - g. used as chemical processing gas turbines.
6. any point source, in accordance with Paragraph H.12 of this Section, that operates less than 400 hours during the ozone season;
7. flares, incinerators, kilns and ovens as defined in Subsection B of this Section;
8. any point source during start-up and shutdown as defined in LAC 33:III.111 or during a malfunction as defined in 40 CFR section 60.2;
9. any point source used solely to start up a process;
10. any point source firing biomass fuel that supplies greater than 50 percent of the heat input on a monthly basis;
11. any point source at a sugar mill;

- 12. fluid catalytic cracking unit regenerators;
- 13. pulp liquor recovery furnaces;
- 14. diesel-fired stationary internal combustion engines;
- 15. any affected point source that is required to meet a more stringent state or federal NO<sub>x</sub> emission limitation (In this case, the monitoring, reporting, and recordkeeping requirements shall be in accordance with the more stringent regulation and not this Chapter.);
- 16. wood-fired boilers that are subject to 40 CFR 60, subpart Db;
- 17. nitric acid production units that are subject to 40 CFR 60, subpart G or LAC 33:III.2307;
- 18. any affected point source firing Number 6 Fuel Oil during a period of emergency and approved by the administrative authority;
- 19. boilers and industrial furnaces treating hazardous waste and regulated under LAC 33:V.Chapter 30 or 40 CFR part 264, 265, or 266, including halogen acid furnaces and sulfuric acid regeneration furnaces; and
- 20. high efficiency boilers or other combustion devices regulated under the Toxic Substance Control Act PCB rules under 40 CFR part 761.

**D. Emission Factors**

1. The following table lists NO<sub>x</sub> emission factors that shall apply to affected point sources located at affected facilities in the Greater Baton Rouge NO<sub>x</sub> Control Area.

NO <sub>x</sub> Emission Factors		
Category	Maximum Rated Capacity	NO <sub>x</sub> Emission Factor <sup>a</sup>
Electric Power Generating System Boilers:		
Coal-fired	>= 80 MMBtu/Hour	0.21 pound/MMBtu
Number 6 Fuel Oil-fired	>= 80 MMBtu/Hour	0.18 pound/MMBtu
All Others (gaseous or liquid)	>= 80 MMBtu/Hour	0.10 pound/MMBtu
Industrial Boilers	>= 80 MMBtu/Hour	0.10 pound/MMBtu
Process Heater/Furnaces:		
Ammonia Reformers	>= 80 MMBtu/Hour	0.23 pound/MMBtu
All Others	>= 80 MMBtu/Hour	0.08 pound/MMBtu
Stationary Gas Turbines	>= 10 MW	0.16 pound/MMBtu <sup>b</sup>
Stationary Internal Combustion Engines:		
Lean-burn	>= 1500 Hp	4g/Hp-hour
Rich-burn	>= 300 Hp	2g/Hp-hour

<sup>a</sup> all factors are based on the higher heating value of the fuel.

<sup>b</sup> equivalent to 42 ppmv (15 percent O<sub>2</sub>, dry basis) with an F factor of 8710 dscf/MMBtu.

2. Any electric power generating system boiler that operates with a combination of fuels shall comply with an adjusted emission factor calculated as follows:

a. if a combination of fuels is used normally, the emission factor from Paragraph D.1 of this Section shall be adjusted by the weighted average heat input of the fuels based on the ozone season average usage in 2000 and 2001, or another period if approved by the department;

b. if the boiler is normally fired with a primary fuel and a secondary fuel is available for back-up, the unit shall comply with the emission factor for the primary fuel while firing the primary fuel and with the emission factor for the secondary fuel while firing the secondary fuel. In addition, the usage of the secondary fuel shall be limited to the ozone

season average usage of the secondary fuel in 2000 and 2001, or another period if approved by the department; and

c. in either case, if the secondary fuel is less than 10 percent of the weighted average, the owner or operator may choose to comply with the unadjusted limit for the primary fuel.

3. For affected point sources in an electric power generating system that fire gaseous or liquid fuels, the emission factors from Subsection D of this Section shall apply as the mass of NO<sub>x</sub> emitted per unit of heat input (pound NO<sub>x</sub> per MMBtu), on a daily average basis. Alternatively, a facility may choose to comply with a ton per day or a pound per hour cap provided that monitoring is installed to demonstrate compliance with the cap. The cap for a facility or for multiple facilities under common control is calculated by adding the products of the factor from Paragraph D.1 of this Section and the averaging capacity for each affected point source as follows:

Equation D-1

$$Cap (tpd) = 0.012 \times \sum_{i=1}^N (R_{li} \times HI_i)$$

Where:

HI<sub>i</sub> = the averaging capacity of each point source (MMBtu/hour)

i = each point source included in the cap

N = the total number of point sources included in the cap

R<sub>li</sub> = the limit for each point source from Subsection D of this Section (pound NO<sub>x</sub>/MMBtu)

4. For all other affected point sources, including those in a coal-fired electric power generating system, the emission factors from Subsection D of this Section shall apply as the mass of NO<sub>x</sub> emitted per unit of heat input (pound NO<sub>x</sub> per MMBtu), on a 30-day rolling average basis. Alternatively, a facility may choose to comply with a cap as detailed in Paragraph D.3 of this Section provided a system, approved by the department, is installed to demonstrate compliance.

5. If one affected point source discharges in part or in whole to another affected point source, the portion discharging into the second point source shall be treated as emanating from the second point source and shall be controlled to the same limit as that specified for the second point source, while the portion discharging directly to the atmosphere from the first point source shall be controlled to the limit of the first point source. This term shall not include a combined cycle unit that discharges into a supplemental firing unit or other type of combustion equipment. For this type of point source, the emissions shall be controlled as follows:

a. for the turbines and/or engines, at the appropriate limits for the turbines and/or engines alone; and

b. for the supplemental firing unit or other type of combustion equipment, at the appropriate limit for the supplemental firing or combustion equipment with the measured emission values adjusted for the emissions coming from the turbines and/or engines.

6. Where a common stack is used to collect vents from affected point sources or affected point sources and exempt point sources and monitoring and/or testing of individual units is not feasible, the department, upon application from the owner or operator, shall specify alternative methods to demonstrate compliance with the emission factors of this Subsection.

7. Any affected point source firing gaseous fuel that contains hydrogen and/or carbon monoxide may apply a multiplier, as calculated below, to the appropriate emission factor given in Paragraph D.1 of this Section. The total hydrogen and/or carbon monoxide volume in the gaseous fuel stream is divided by the total gaseous fuel flow volume to determine the volume percent of hydrogen and/or carbon monoxide in the fuel supply. In order to apply this multiplier, the owner or operator of the affected point source shall sample and analyze the fuel gas composition for hydrogen and/or carbon monoxide in accordance with Paragraph G.5 of this Section.

Equation D-2

If (Vol. % H<sub>2</sub> + Vol. % CO) = or < 50

Then

$$\text{fuel multiplier} = 1 + \frac{0.5 \times (\text{Vol. \% H}_2 + \text{Vol. \% CO})}{100}$$

Otherwise

$$\text{fuel multiplier} = 1.25$$

8. The owner or operator of a stationary gas turbine using a fuel that has an F factor different than 8710 dscf/MMBtu may adjust the allowable emission factor shown in Paragraph D.1 of this Section. The adjustment is made by dividing the actual F factor (dscf/MMBtu) of the fuel by 8710 and multiplying the result by 0.16 to get the adjusted allowable emission factor. The use of this option shall be detailed in the permit application or in the optional compliance plan described in Paragraph F.7 of this Section.

9. On a day that is designated as an Ozone Action Day by the department, a facility shall not fire an affected point source with Number 6 Fuel Oil or perform testing of emergency and training combustion units without prior approval of the administrative authority.

#### E. Alternative Plans

1. Facility-Wide Averaging Plan. A facility-wide averaging plan is established in this Chapter for single affected facilities and multiple affected facilities that are owned and operated by the same entity. Within the Greater Baton Rouge NO<sub>x</sub> Control Area, an owner or operator of one or more affected facilities may use the facility-wide averaging plan as an alternative means of compliance with the emission factors from Subsection D of this Section. A request for approval to use a facility-wide averaging plan, that includes the details of the plan, shall be submitted to the department either separately or with the permit application or in the optional compliance plan described in Paragraph F.7 of this Section. A facility-wide averaging plan submitted under this provision shall be approved if the department determines that it will provide emission reductions equivalent to or more than that required by the emission factors in Subsection D of this Section and the plan

establishes satisfactory means for determining ongoing compliance, including appropriate monitoring and recordkeeping requirements. Approval of the alternative plans by the administrative authority does not necessarily indicate automatic approval by the administrator.

a. An owner or operator who elects to use a facility-wide averaging plan for compliance shall establish an emission factor for each applicable affected point source such that if each affected point source was operated at its averaging capacity, the cumulative emission factor in pounds NO<sub>x</sub>/MMBtu from all point sources in the averaging group would not exceed the facility-wide emission factor, as shown in Equation E-3. The equations below shall be used to calculate the cumulative emission rate and the facility-wide emission factor.

$$FL = \sum_{i=1}^N (R_{li} \times f_i) \quad \text{Equation E-1}$$

Where:

$$f_i = HI_i / \sum_{i=1}^N HI_i \quad \text{Equation E-2}$$

$$\sum_{i=1}^N (R_{ai} \times f_i) \leq FL \quad \text{Equation E-3}$$

Where:

- f<sub>i</sub> = fraction of total system averaging capacity for point source i
- HI<sub>i</sub> = the averaging capacity of each point source (MMBtu/hour)
- i = each point source in the averaging group
- N = the total number of point sources in the averaging group
- R<sub>ai</sub> = the limit assigned by the owner to each point source in the averaging plan (pound NO<sub>x</sub>/MMBtu)
- R<sub>li</sub> = the limit for each point source from Subsection D of this Section (pound NO<sub>x</sub>/MMBtu)
- FL = facility-wide emission factor (pound NO<sub>x</sub>/MMBtu) of all point sources included in the averaging plan

b. An owner or operator of an electric power generating system that fires gaseous or liquid fuels and that chooses to use an averaging plan shall demonstrate compliance by either of the following methods:

i. operating such that each affected point source does not exceed its assigned individual limit in pound NO<sub>x</sub>/MMBtu on a daily average basis; or

ii. complying with a cap as described in Paragraph D.3 of this Section, provided that a monitoring system is installed to demonstrate compliance with the cap.

c. Owners or operators of all other affected point sources, including those in a coal-fired electric power generating system, that choose to use an averaging plan shall demonstrate compliance by either of the following methods:

i. operating such that each affected point source does not exceed its assigned individual limit in pound NO<sub>x</sub>/MMBtu on a 30-day rolling average basis; or

ii. complying with a cap as described in Paragraph D.4 of this Section, provided a system, approved

by the department, is installed to demonstrate compliance with the cap.

d. Notwithstanding the compliance methods described in Clauses E.1.b.i and c.i of this Section, the owner or operator that chooses to use an averaging plan shall include in the submitted plan provisions that demonstrate to the department that any under-controlled unit will not be operated at more than ten percent above its calculated averaging capacity fraction ( $f_i$  in Equation E-2). If this limit is not adequately demonstrated, the department shall require that the facility demonstrate compliance by operating such that the facility-wide emission factor, FL, is not exceeded, instead of by the methods described in Clause E.1.b.i or c.i of this Section.

e. The owner or operator of affected point sources complying with the requirements of this Subsection can include in the plan either all of the affected point sources at the facility or select only certain sources to be included.

f.  $\text{NO}_x$  reductions accomplished after 1997 through curtailments in capacity of a point source with a permit revision or by permanently shutting down the point source may be included in the averaging plan. In order to include a unit with curtailed capacity in the averaging plan, the old averaging capacity, determined from the average of the two ozone seasons prior to the capacity curtailment, shall be used to calculate the unit's contribution to the term FL. The new averaging capacity, determined from the enforceable permit revision, shall be multiplied by the owner assigned limit to calculate the contribution of the curtailed unit to the cumulative emission factor for the averaging group.

g.  $\text{NO}_x$  reductions from exempted point sources, as defined in Subsection C of this Section, may be used in a facility-wide averaging plan. If a unit exempted in Subsection C of this Section is included in an averaging plan, the term  $R_{ij}$  in Equation E1 shall be established, in accordance with Subsection G of this Section, from a stack test that was performed before the  $\text{NO}_x$  reduction project was implemented and the term  $R_{ai}$  shall be established from the owner-assigned emission factor in accordance with Subparagraph E.1.a of this Section.

h. Solely for the purpose of calculating the facility-wide emission factor, the allowable emission factor (pound  $\text{NO}_x$ /MMBtu) for each affected stationary internal combustion engine is the applicable  $\text{NO}_x$  emission factor from Subsection D of this Section (g/Hp-hour) divided by the product of the engine manufacturer's rated heat rate (expressed in Btu/Hp-hour) at the engine's Hp rating and  $454 \times 10^6$ .

i. The owner or operator of affected point sources complying with the requirements of this Subsection in accordance with an emissions averaging plan shall carry out recordkeeping that includes, but is not limited to, a record of the data on which the determination of each point source's hourly, daily, or 30-day, as appropriate, compliance with the facility-wide averaging plan is based.

2. Trading Plan. Trading is established in this Chapter as an alternate means of compliance with the emission factors from Subsection D of this Section. Within the Greater Baton Rouge  $\text{NO}_x$  Control Area, trading allowances, as defined in Subsection B of this Section, may be traded between affected facilities owned by different companies in

accordance with the provisions of LAC 33:III.Chapter 6. The approval to use trading shall be requested in the permit application or in the optional compliance plan described in Paragraph F.7 of this Section. A trading plan submitted under this provision shall be approved if the department determines that it will provide  $\text{NO}_x$  emission reductions equivalent to or more than that required by the emission factors of Subsection D of this Section and the plan establishes satisfactory means for determining ongoing compliance, including appropriate monitoring and recordkeeping requirements. Approval of trading plans by the administrative authority does not necessarily indicate automatic approval of the administrator.

#### F. Permits

##### 1. Authorization to Install and Operate $\text{NO}_x$ Control Equipment

a. An owner or operator may obtain approval to install and operate  $\text{NO}_x$  control equipment that does not result in ammonia emissions above the minimum emission rate (MER) in LAC 33:III.Chapter 51 by submitting documentation in accordance with LAC 33:III.511. This documentation shall include an estimate of any carbon monoxide (CO), sulfur dioxide ( $\text{SO}_2$ ), particulate matter ( $\text{PM}_{10}$ ), and/or volatile organic compound (VOC) emission increases associated with the  $\text{NO}_x$  control technology. If approved, the administrative authority shall grant an authorization to construct and operate in accordance with LAC 33:III.501.C.3. Any appropriate permit revision reflecting the emission reduction shall be obtained no later than 180 days after commencement of operation and in accordance with the procedures of LAC 33:III.Chapter 5.

b. In accordance with LAC 33:III.511.C, installation of  $\text{NO}_x$  control equipment that results in ammonia emissions above the MER in LAC 33:III.Chapter 51 shall not commence until a permit or permit modification has been approved by the administrative authority. In accordance with LAC 33:III.5107.D.1, the administrative authority shall provide at least 30 days for public comment before issuing any such permit.

2. Alternatively to Subparagraph F.1.a of this Section, an owner or operator of an affected facility that is operating with a Louisiana air permit may submit a completed permit modification application for the changes proposed to comply with this Chapter.

3. Any owner or operator with an affected facility that has retained grandfathered status, as described in LAC 33:III.501.B.6, shall submit an application in accordance with LAC 33:III.501.C.1 for the changes proposed to comply with this Chapter.

4. Duty to Supplement. In accordance with LAC 33:III.517.C, if an owner or operator has a permit application on file with the department, but the department has not released the proposed permit, the applicant shall supplement the application as necessary to address this Chapter.

5. Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Considerations. A significant net emissions increase in CO,  $\text{SO}_2$ ,  $\text{PM}_{10}$ , and/or VOC in accordance with LAC 33:III.504 or 509, that is a direct result of, and incidental to, the installation of  $\text{NO}_x$  control equipment or implementation of a  $\text{NO}_x$  control technique required to comply with the

provisions of this Chapter shall be exempt from the requirements of LAC 33:III.509 and/or 504, as appropriate, provided the following conditions are met:

- a. the project shall not:
    - i. cause or contribute to a violation of the national ambient air quality standard (NAAQS); or
    - ii. adversely affect visibility or other air quality related value (AQRV) in a class I area;
  - b. any increase in CO, SO<sub>2</sub>, PM<sub>10</sub>, and/or VOC emissions shall be:
    - i. quantified in the submittal required by Paragraphs F.1-4 of this Section; and
    - ii. tested in accordance with Subsection G of this Section, as applicable;
  - c. notwithstanding the requirements of Table 1 of LAC 33:III.504, any increase of VOC emissions at an affected facility located in a nonattainment parish shall be offset at a ratio of at least 1:1. Offsets shall be surplus, permanent, quantifiable, and federally enforceable and calculated in accordance with LAC 33:III.Chapter 6; and
  - d. a 30-day public comment period shall be provided in accordance with LAC 33:III.519.C prior to issuance of a permit or permit modification.
6. Increases above the MER in toxic air pollutant (TAP) emissions shall be subject to the applicable requirements of LAC 33:III.Chapter 51.

7. When pre-permit application approval of plans is desired by an owner or operator, a compliance plan may be submitted in accordance with this Subsection. The administrative authority shall approve the plan if it contains all of the required information to determine that the affected sources will be in compliance with this Chapter and is accurate. The compliance plan may address individual point sources, groups of point sources, or all point sources at the facility, as determined by the owner. The following information shall be submitted as appropriate:

- a. the facility designation, as indicated by the identification number, submitted to the Office of Environmental Services, Permits Division;
- b. a list of all units in the compliance plan, the emission point number as designated on the emission inventory questionnaire, the averaging capacity, and the maximum rated capacity;
- c. identification of all combustion units with a claimed exemption in accordance with Subsection C of this Section, and the rule basis for the claimed exemption;
- d. a list of any units that have been, or will be, curtailed or permanently shutdown;
- e. for each unit, the actual emission factor that will be used to achieve compliance;
- f. the control technology to be applied for each unit subject to control, and an anticipated construction schedule for each control device including the dates for completion of engineering, submission of permit applications, start and finish of construction, and initial start-up; and
- g. the calculations to demonstrate that each unit will achieve the required NO<sub>x</sub> emission rate.

#### G Initial Demonstration of Compliance

1. Emissions testing to demonstrate initial compliance with the NO<sub>x</sub> emission factors of Subsection D of this Section, or with emission limits that are part of an alternative plan under Subsection E of this Section, for affected point

sources operating with a CEMS or PEMS that has been certified in accordance with Subsection H of this Section is not required. The certification of the CEMS or PEMS shall be considered demonstration of initial compliance. Testing for initial compliance is not required for an existing CEMS or PEMS that meets the requirements of Subsection H of this Section.

2. Emissions testing is required for all point sources that are subject to the emission limitations of Subsection D of this Section or used in one of the alternative plans of Subsection E of this Section. Test results must demonstrate that actual NO<sub>x</sub> emissions are in compliance with the appropriate limits of this Chapter. As applicable, CO, SO<sub>2</sub>, PM<sub>10</sub>, oxygen (O<sub>2</sub>), NH<sub>3</sub>, and VOC shall also be measured. Performance testing of these point sources shall be performed in accordance with the schedule specified in Subsection J of this Section.

3. The tests required by Paragraph G.2 of this Section shall be performed by the test methods referenced in Paragraph G.5 of this Section, except as approved by the administrative authority in accordance with Paragraph G.7 of this Section. Test results shall be reported in the units of the applicable emission factors and for the corresponding averaging periods.

4. Emission testing conducted in the three years prior to the initial demonstration of compliance date may be used to demonstrate compliance with the limits of Subsection D or E of this Section, if the owner or operator demonstrates to the department that the prior testing meets the requirements of this Subsection. The request to waive emissions testing according to this Paragraph shall be included in the permit application. The department reserves the right to request performance testing or CEMS performance evaluation upon reasonable notice.

5. Compliance with the emission specifications of Subsection D or E of this Section for affected point sources operating without CEMS or PEMS shall be demonstrated while operating at the maximum rated capacity, or as near thereto as practicable. The stack tests shall be performed according to emissions testing guidelines located on the department website in the technology section. Three minimum one-hour tests shall be performed and the following methods from 40 CFR part 60, appendix A shall be used:

- a. Methods 1, 2, 3, and 4 or 19, with prior approval, for exhaust gas flow;
- b. Method 3A or 20 for O<sub>2</sub>;
- c. Method 5 for PM;
- d. Method 6C for SO<sub>2</sub>;
- e. Method 7E or 20 for NO<sub>x</sub>;
- f. Method 10 or 10A for CO;
- g. Method 18 or 25A for VOC;
- h. modified Method 5, or a department-approved equivalent, for NH<sub>3</sub>; and/or
- i. American Society of Testing and Materials (ASTM) Method D1945-96 or ASTM Method D2650-99 for fuel composition; ASTM Method D1826-94 or ASTM Method D3588-98 for calorific value.

6. All alternative or equivalent test methods, waivers, monitoring methods, testing and monitoring procedures, customized or correction factors, and alternatives to any design, equipment, work practices, or operational standards

must be approved by both the administrative authority and the administrator, if applicable, before they become effective.

7. An owner or operator may request approval from the department for minor modifications to the test methods listed in Paragraph G.5 of this Section, including alternative sampling locations and testing a subset of similar affected sources, prior to actual stack testing.

8. The information required in this Subsection shall be provided in accordance with the effective dates in Subsection J of this Section.

H. Continuous Demonstration of Compliance. After the initial demonstration of compliance required by Subsection G of this Section, continuous compliance with the emission factors of Subsection D or E of this Section, as applicable, shall be demonstrated by the methods described in this Subsection. For any alternative method, the department's approval does not necessarily constitute compliance with all federal requirements nor eliminate the need for approval by the administrator.

1. The owner or operator of boilers that are subject to this Chapter and that have a maximum rated capacity that is equal to or greater than 80 MMBtu/hour shall demonstrate continuous compliance as follows:

a. for boilers with a maximum rated capacity less than 250 MMBtu/hour:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage;

ii. install, calibrate, maintain, and operate an oxygen monitor to measure oxygen concentration; and

iii. in order to continuously demonstrate compliance with the NO<sub>x</sub> limits of Subsection D or E of this Section, implement procedures to operate the boiler within the fuel and oxygen limits established during the initial compliance run in accordance with Subsection G of this Section; and

b. for boilers with a maximum rated capacity equal to or greater than 250 MMBtu/hour:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure gas and/or liquid fuel usage. For coal-fired boilers, belt scales or an equivalent device shall be provided;

ii. install, calibrate, maintain, and operate a diluent (either oxygen or carbon dioxide) monitor. The monitor shall meet all of the requirements of performance specification 3 of 40 CFR 60, appendix B;

iii. install, calibrate, maintain, and operate a NO<sub>x</sub> CEMS to demonstrate continuous compliance with the NO<sub>x</sub> emission factors of Subsection D or E of this Section, as applicable. The CEMS shall meet all of the requirements of 40 CFR part 60.13 and performance specification 2 of 40 CFR 60, appendix B; and

iv. install, calibrate, maintain, and operate a CO monitor. The monitor shall meet all of the requirements of performance specification 4 of 40 CFR 60, appendix B; or

v. alternatively to Clauses H.1.b.ii-iv of this Section, for demonstration of continuous compliance, the owner or operator may install, calibrate, certify, maintain, and operate a PEMS to predict NO<sub>x</sub>, diluent (O<sub>2</sub> or CO<sub>2</sub>), and CO emissions for each affected point source. As an alternative to using the PEMS to monitor diluent (O<sub>2</sub> or CO<sub>2</sub>), a monitor for diluent according to Clause H.1.b.ii of

this Section or similar alternative method approved by the department may be used. The PEMS shall be certified while operating on primary boiler fuel and, separately, on any alternative fuel. The certification shall be in accordance with EPA documents, "Example Specifications and Test Procedures for Predictive Emission Monitoring Systems" and "Predictive Emission Monitoring System to Determine NO<sub>x</sub> and CO Emissions from an Industrial Furnace" that are located on the EPA website in the emission monitoring section, both with posting dates of July 31, 1997; or

vi. alternatively to Clauses H.1.b.ii-iv of this Section, the owner or operator may request approval from the administrator for an alternative monitoring plan that uses a fuel-oxygen operating window to demonstrate continuous compliance of NO<sub>x</sub> and CO. The corners of the window shall be established during the initial compliance test required by Subsection G of this Section or similar testing at another time. The details for use of an alternative monitoring plan shall be submitted in the permit application or in the optional compliance plan described in Paragraph F.7 of this Section. The plan shall become part of the facility permit and shall be federally enforceable.

2. The owner or operator of process heater/furnaces that are subject to this Chapter and that have a maximum rated capacity that is equal to or greater than 80 MMBtu/hour shall demonstrate continuous compliance as follows:

a. for process heater/furnaces with a maximum rated capacity less than 250 MMBtu/hour:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage;

ii. install, calibrate, maintain, and operate an oxygen monitor to measure oxygen concentration; and

iii. in order to continuously demonstrate compliance with the NO<sub>x</sub> limits of Subsection D or E of this Section, implement procedures to operate the process heater/furnace within the fuel and oxygen limits established during the initial compliance run in accordance with Subsection G of this Section; and

b. for process heater/furnaces with a maximum rated capacity equal to or greater than 250 MMBtu/hour:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage;

ii. install, certify, maintain, and operate an oxygen or carbon dioxide diluent monitor in accordance with the requirements of Clause H.1.b.ii of this Section;

iii. install, certify, maintain, and operate a NO<sub>x</sub> CEMS in accordance with the requirements of Clause H.1.b.iii of this Section; and

iv. install, certify, maintain, and operate a CO monitor in accordance with the requirements of Clause H.1.b.iv of this Section; or

v. alternatively to Clauses H.2.b.ii-iv of this Section, the owner or operator may install, calibrate, certify, maintain, and operate a PEMS in accordance with the requirements of Clause H.1.b.v of this Section; or

vi. alternatively to Clauses H.2.b.ii-iv of this Section, the owner or operator may request approval from the department for an alternative monitoring plan that uses a fuel-oxygen operating window, or other system, to demonstrate continuous compliance of NO<sub>x</sub> and CO. The corners of the window shall be established during the initial

compliance test required by Subsection G of this Section or similar testing at another time. The details for use of an alternative monitoring plan shall be submitted in the permit application or in the optional compliance plan described in Paragraph F.7 of this Section. The plan shall become part of the facility permit and shall be federally enforceable.

3. The owner or operator of stationary gas turbines that are subject to this Chapter and that have a megawatt rating based on heat input that is equal to or greater than 10 MW shall demonstrate continuous compliance as follows:

a. for stationary gas turbines with a megawatt rating based on heat input less than 30 MW:

i. if the stationary gas turbine uses steam or water injection to comply with the NO<sub>x</sub> emission factors, install, calibrate, maintain, and operate a continuous system to monitor and record the average hourly fuel and steam or water consumption and the water or steam to fuel ratio. To demonstrate continuous compliance with the appropriate emission factor, the stationary gas turbine shall be operated at the required steam-to-fuel or water-to-fuel ratio as determined during the initial compliance test; and

ii. for other stationary gas turbines, install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage. Compliance with the emission factors of Subsection D or E of this Section shall be demonstrated by operating the turbine within the fuel limits established during the initial compliance run in accordance with Subsection G of this Section and by annual testing for NO<sub>x</sub> and CO with an approved portable analyzer; or

iii. alternatively to Clause H.3.a.i or ii of this Section, an owner or operator may choose to comply with the requirements of Clauses H.3.b.i-iv or v of this Section to demonstrate continuous compliance with the limits of Subsection D or E of this Section; and

b. for stationary gas turbines with a megawatt rating based on heat input of 30 MW or greater:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage;

ii. install, certify, maintain, and operate an oxygen or carbon dioxide diluent monitor in accordance with the requirements of Clause H.1.b.ii of this Section;

iii. install, certify, maintain, and operate a NO<sub>x</sub> CEMS in accordance with the requirements of Clause H.1.b.iii of this Section; and

iv. install, certify, maintain, and operate a CO monitor in accordance with the requirements of Clause H.1.b.iv of this Section; or

v. alternatively to Clauses H.3.b.ii-iv of this Section, the owner or operator may install, calibrate, certify, maintain, and operate a PEMS in accordance with the requirements of Clause H.1.b.v of this Section; or

vi. alternatively to Clauses H.3.b.ii-iv of this Section, the owner or operator may request approval from the department for an alternative monitoring plan that complies with the provisions of Clause H.3.a.i of this Section, if the turbine uses steam or water injection for compliance, or Clause H.3.a.ii of this Section for other turbines. The alternative plan shall also require annual testing for NO<sub>x</sub> and CO with an approved portable analyzer and triennial stack testing for NO<sub>x</sub> and CO in accordance with the methods specified in Paragraph G.5 of this Section.

The details for use of an alternative monitoring plan shall be submitted in the permit application or in the optional compliance plan described in Paragraph F.7 of this Section. The plan shall become part of the facility permit and shall be federally enforceable.

4. The owner or operator of stationary internal combustion engines that are subject to this Chapter and have a horsepower rating of 300 Hp or greater for rich-burn engines or 1500 Hp or greater for lean-burn engines shall demonstrate continuous compliance as follows:

a. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage and demonstrate continuous compliance by operating the engine within the fuel limits established during the initial compliance run and by annual testing for NO<sub>x</sub> and CO with an approved portable analyzer and by triennial stack testing for NO<sub>x</sub> and CO in accordance with the methods specified in Paragraph G.5 of this Section; or

b. alternatively to Subparagraph H.4.a of this Section, an owner or operator may choose to comply with the requirements of Clauses H.3.b.i-iv or v of this Section to demonstrate continuous compliance with the limits of Subsection D or E of this Section.

5. A CEMS unit may be used to monitor multiple point sources provided that each source is sampled at least once every 15 minutes and the arrangement is approved by the department.

6. Existing instrumentation for any requirement in this Subsection shall be acceptable upon approval of the department.

7. For any affected point source that uses a chemical reagent for reduction of NO<sub>x</sub>, a NO<sub>x</sub> CEMS, in accordance with Clause H.1.b.iii of this Section, and a CO monitor, in accordance with Clause H.1.b.iv of this Section, shall be provided.

8. For boilers or process heater/furnaces that are covered by this Chapter, that discharge through a common stack, and where the combined heat input is greater than 250 MMBtu, a NO<sub>x</sub> CEMS, in accordance with Clause H.1.b.iii of this Section, and a CO monitor, in accordance with Clause H.1.b.iv of this Section, shall be provided.

9. The owner or operator of any affected point source firing gaseous fuel for which a fuel multiplier from Paragraph D.7 of this Section is used shall sample, analyze, and record the fuel gas composition on a daily basis or on an alternative schedule approved by the administrative authority. If an owner or operator desires to use an alternative sampling schedule, he shall specify a sampling frequency in his permit application and provide an explanation for the alternative schedule. Fuel gas analysis shall be performed according to the methods listed in Subparagraph G.5.g of this Section, or other methods that are approved by the department. A gaseous fuel stream containing 99 percent H<sub>2</sub> and/or CO by volume or greater may use the following procedure to be exempted from the sampling and analysis requirements of this Subsection:

a. a fuel gas analysis shall be performed initially using the test methods in Subparagraph G.5.g of this Section to demonstrate that the gaseous fuel stream is 99 percent H<sub>2</sub> and/or CO by volume or greater; and

b. the owner or operator shall certify that the fuel composition will continuously remain at 99 percent H<sub>2</sub>

and/or CO by volume or greater during its use as a fuel to the point source.

10. All affected point sources that rely on periodic stack testing to demonstrate continuous compliance and use a catalyst to control NO<sub>x</sub> emissions shall be tested after each occurrence of catalyst replacement. Portable analyzers shall be acceptable for this check. Documentation shall be maintained on-site, if practical, of the date, the person doing the test, and the test results. Documentation shall be made available for inspection upon request.

11. The owner or operator of any low ozone season capacity factor boiler or process heater/furnace for which an exemption is granted shall install, calibrate, and maintain a totalizing fuel meter, with instrumentation approved by the department, and keep a record of the fuel input for each affected point source during each ozone season. The owner or operator of any boiler or process heater/furnace covered under this exemption shall notify the administrative authority within seven days if the Btu-per-ozone season limit is exceeded. If the Btu-per-ozone season limit is exceeded, the exemption shall be permanently withdrawn. Within 90 days after receipt of notification from the administrative authority of the loss of the exemption, the owner or operator shall submit a permit modification detailing how to meet the applicable emission factor as soon as possible, but no later than 24 months, after exceeding the Btu-per-ozone season limit. Included with this permit modification, the owner or operator shall submit a schedule of increments of progress for the installation of the required control equipment. This schedule shall be subject to the review and approval of the department.

12. The owner or operator of any affected point source that is granted an exemption for operating less than 400 hours during the ozone season shall install, calibrate, and maintain a nonresettable, elapsed run-time meter to record the operating time in order to demonstrate compliance. The owner or operator shall notify the administrative authority within seven days if the hours-per-ozone season limit is exceeded. If the hour-per-ozone season limit is exceeded, the exemption shall be permanently withdrawn. Within 90 days after receipt of notification from the administrative authority of the loss of the exemption, the owner or operator shall submit a permit modification detailing how to meet the applicable emission factor as soon as possible, but no later than 24 months, after exceeding the limit. Included with this permit modification, the owner or operator shall submit a schedule of increments of progress for the installation and operation of the required control equipment. This schedule shall be subject to the review and approval of the department.

#### I. Notification, Recordkeeping, and Reporting Requirements

1. The owner or operator of an affected point source shall notify the department at least 30 days prior to any compliance testing conducted under Subsection G of this Section and any CEMS or PEMS performance evaluation conducted under Subsection H of this Section in order to give the department an opportunity to conduct a pretest meeting and observe the emission testing. All necessary sampling ports and such other safe and proper sampling and testing facilities as required by LAC 33:III.913, or alternatives approved by the department, shall be provided

for the testing. The test report shall be submitted to the department within 60 days after completing the testing.

2. The owner or operator of an affected point source required to demonstrate continuous compliance in accordance with Subsection H of this Section shall submit a written report within 90 days of the end of each quarter to the administrative authority for any noncompliance of the applicable emission limitations of Subsection D or E of this Section. The required information may be included in reports provided to the administrative authority to meet other requirements, so long as the report meets the deadlines and content requirements of this Paragraph. The report shall include the following information:

- a. description of the noncompliance;
- b. cause of the noncompliance;
- c. anticipated time that the noncompliance is expected to continue or, if corrected, the duration of the period of noncompliance; and
- d. steps taken to prevent recurrence of the noncompliance.

3. The owner or operator of an affected point source shall maintain records of all continuous monitoring, performance test results, hours of operation, and fuel usage rates for each affected point source. Such records shall be kept for a period of at least five years and shall be made available upon request by authorized representatives of the department. The emission monitoring (as applicable) and fuel usage records for each affected point source shall be recorded and maintained:

- a. hourly for affected point sources complying with an emission factor on an hourly basis;
- b. daily for affected point sources complying with an emission factor enforced on a daily average basis or on a 30-day rolling average basis; and
- c. monthly for affected point sources exempt from the emission specifications based on ozone season heat input or hours of operation per ozone season.

4. The owner or operator shall maintain the following records:

- a. records for a facility-wide averaging plan in accordance with Subparagraph E.1.i of this Section;
- b. records approved for a trading plan in accordance with Paragraph E.2 of this Section; and
- c. records in accordance with Paragraphs H.7, 8, 9, 10, 11, and 12 of this Section.

5. Ammonia emissions resulting from the operation of a NO<sub>x</sub> control equipment system shall be reported annually in accordance with LAC 33:III.5107.A.

#### J. Effective Dates

1. The owner or operator of an affected facility shall modify and/or install and bring into normal operation NO<sub>x</sub> control equipment and/or NO<sub>x</sub> monitoring systems in accordance with this Chapter as expeditiously as possible, but by no later than May 1, 2005.

2. The owner or operator shall complete all initial compliance testing, specified by Subsection G of this Section, for equipment modified with NO<sub>x</sub> reduction controls or a NO<sub>x</sub> monitoring system to meet the provisions of this Chapter within 60 days of achieving normal production rate or after the end of the shake down period, but in no event later than 180 days after initial start-up. Required testing to demonstrate the performance of existing,

unmodified equipment shall be completed in a timely manner, but by no later than November 1, 2005.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

J. Dale Givens  
Secretary

0201#080

## DECLARATION OF EMERGENCY

### Office of the Governor Division of Administration Racing Commission

Claiming Rule (LAC 35:XI.9915 and 9939)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., amends the following Emergency Rule effective December 13, 2001 (extending its emergency status), and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this rule because it is no longer desirable nor necessary to limit someone to claim only one horse out of a claiming race; it is more beneficial to all parties to increase that limit to two. This is consistent with other racing jurisdictions.

### Title 35 HORSE RACING

#### Part XI. Claiming Rules and Engagements

##### Chapter 99. Claiming Rule

##### §9915. Number of Horses Claimed per Race

A. No person shall claim more than two horses in a race.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:446 (December 1976), amended LR 3:42 (January 1977), LR 4:285 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

##### §9939. Number of Claims on Stable or Trainer

A. When a trainer is training for more than one owner, only two claims from that stable will be allowed for any one race. Only one claim from owners having the same trainer will be allowed for any one horse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission LR 2:447 (December 1976), repromulgated LR 3:42 (January 1977), LR 4:286 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

Charles A. Gardiner III  
Executive Director

0201#011

## DECLARATION OF EMERGENCY

### Office of the Governor Division of Administration Racing Commission

Corrupt and Prohibited Practices Penalty Guidelines  
(LAC 35:I.1797)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective January 22, 2002 (extending its emergency status), and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this rule to provide for revised penalty guidelines for violations of class IV and V drugs/substances found in equine biological samples.

### Title 35

#### HORSE RACING

##### Part I. General Provisions

##### Chapter 17. Corrupt and Prohibited Practices

##### §1797. Penalty Guidelines

A. - B3. ...

4. *Classes IV and V*: possible suspension of license for a period not more than 60 days and a fine of not less than \$500 nor more than \$1,500, or both, depending on the severity and number of violations occurring within a 12-month period. The purse may be redistributed.

a. On ordinary violation(s) of Classes IV or V within a 12-month period the penalty shall be a fine of \$500 on the first violation; a fine of \$1,000 on the second violation; a fine of \$1,000 on the third and subsequent violations and referred to the commission. The purse shall be redistributed commencing with the fourth violation within a 12-month period.

b. On extraordinary violation(s) of Classes IV or V in a manner that might affect the performance of a horse within a 12-month period the penalty shall be a fine of \$1,000 on the first offense; a fine of \$1,000 and referred to the commission for further action on second and subsequent violations. The purse shall be redistributed commencing with the third violation within a 12-month period.

c. On gross violation(s) of Classes IV or V in a manner that intends to affect the performance of a horse the penalty shall be not less than \$1,000 and referred to the commission for further action. The purse shall be redistributed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission LR 19:612 (May 1993), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

Charles A. Gardiner III  
Executive Director

0201#009

## DECLARATION OF EMERGENCY

**Office of the Governor  
Division of Administration  
Racing Commission**

Licenses Necessary for Entry (LAC 45:XLI.1105)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule effective December 11, 2001, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this rule to provide for an age limitation for possessing an owner's license, and related requirements.

### Title 46

## PROFESSIONAL AND OCCUPATIONAL STANDARDS

### Part I. Horseracing Occupations

#### Chapter 11. Owners

##### §1105. Licenses Necessary for Entry

A. Before a horse may be entered, its owner or owners must secure the appropriate licenses from the commission, unless permission is granted by the stewards.

B. The minimum age for an owner's applicant is 16 years old. However, for every applicant under the age of 18 years old, the owner's license application shall be submitted with a notarized affidavit from his or her parent or legal guardian stating that the parent or legal guardian assumes responsibility for the minor licensee's financial, contractual and other obligations relating to the applicant's participation in racing. Further, the applicant's parent or legal guardian must be eligible and present for eligibility for licensing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:150.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission, LR 2:429 (December 1976), repromulgated LR 3:25 (January 1977), LR 4:274 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

Charles A. Gardiner III  
Executive Director

0201#013

## DECLARATION OF EMERGENCY

**Office of the Governor  
Division of Administration  
Racing Commission**

Net Slot Machine Proceeds (LAC 35:III.5737)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective December 11, 2001 (revising Subsection C of the previous Emergency Rule), and it shall remain in effect for

120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to adopt this rule to expand on the statutes involving slot machines housed at racing associations, specifically R.S. 27:353, R.S. 27:354 and R.S. 27:361, and specify certain provisions thereof.

### Title 35

## HORSE RACING

### Part III. Personnel, Registration and Licensing

#### Chapter 57. Associations= Duties and Obligations

##### §5737. Net Slot Machine Proceeds

A. The commission, pursuant to R.S. 27:354, finds that it is in the best interests of licensed associations, breeders associations, horsemen, and the state that the annual payments provided for in R.S. 27:361 be paid in monthly installments.

B. The definitions set forth in R.S. 27:353 are incorporated herein by reference.

C. Not later than the date on which an association installs slot machines at its facility, it shall open three separate checking accounts as provided for herein. One account shall be a control bank account into which not less than 18 percent of the net slot machine proceeds for the activity month shall be deposited in sufficient time to be distributed or disbursed not later than the twentieth day of the following month as required by these rules. The association shall also open two distinct interest bearing accounts, one for thoroughbred purse proceeds and one for quarter horse purse proceeds, into which the association shall make its deposits for purse supplements totaling 15 percent of net slot machine proceeds and from which funds, including interest earned, such purse supplements shall be made available as provided by law and these rules.

D. While an association is conducting live racing, the monies due to be paid pursuant to R.S. 27:361(B)(4)(a) shall be made available monthly for use as purses prior to the twentieth day of the month following the month in which they are earned, during the current race meeting.

E. While an association is not conducting live racing, the monies due to be paid pursuant to R.S. 27:361(B)(4)(a) shall be deposited in the appropriate breed account either (1) for accrual until the first day of the next live race meeting conducted by that association for that breed at which time such accumulated monies, including interest, shall be used to supplement appropriate purses during that race meeting, or (2) with prior written agreement of the Louisiana HBPA for reimbursement to the association for actual funds advanced to supplement purses at a preceding race meeting in anticipation of the revenue to be earned from slot machines. However, an association shall not be reimbursed except from proceeds earned during the same annual period during which it advanced the purse supplements.

F. The monies due to be paid by an association pursuant to R.S. 27:361(B)(4)(b) and (c) shall be remitted monthly to the appropriate breeders association and the monies due to be paid by an association pursuant to R.S. 27:361(B)(4)(a)(i) and (ii) shall be remitted monthly to the HBPA, prior to the twentieth day of the month following the month in which they are earned.

G. Each racing association conducting slot machine gaming shall file with the commission a complete report, on a form acceptable to the commission, not later than the twentieth day of each month, setting forth the amounts deposited and payments made from the net slot machine proceeds earned the preceding month, as well as payments for purses and payments to breeders associations and to the HBPA. Copies of those bank accounts required to be maintained by Subsection C of this Rule shall be submitted to the commission along with the monthly report.

H. Each racing association, after conducting slot machine gaming for 12 months, shall file an annual report with the commission, on forms acceptable to the commission, not later than the twentieth day of the following month, and on that date each following year, which report shall certify under oath by a responsible officer the association's compliance with all requirements under R.S. 27:361(B)(4) and under this rule. Each such 12-month period shall constitute an annual period for the purposes of this Rule.

I. All records and reports pertaining to slot machines, including checking accounts, maintained by an association shall be subject to inspection, reporting procedures and audits by the commission. All records and reports on revenues and expenses from slot machines shall be included as part of the association's annual CPA opinion audit submitted to the commission.

J. Before receiving any payments provided by R.S. 27:361(B)(4)(b) or (c), the respective executive committee of the Louisiana Thoroughbred Breeders Association and executive committee of the Louisiana Quarter Horse Breeders Association shall file with the commission the schedule or formula and within a time period which it has established for the distribution of such funds. Any amendments or modifications to such distribution schedule or formula shall be filed with the commission within 30 days of its adoption by the executive committee. A true and complete copy of each such filing with the commission shall be delivered to each racing association and the filing shall so certify delivery. Each executive committee shall also file a monthly report with the commission of revenue received, payments made, and the bank balance on hand along with a copy of the bank statement.

K. After the expiration of one year from the filing of its first distribution schedule or formula with the commission but within 20 days thereafter, and on that date each following year, the respective executive committee of the Louisiana Thoroughbred Breeders Association and executive committee of the Louisiana Quarter Horse Breeders Association shall file with the commission a report which shall certify under oath by a responsible officer the association's compliance with its applicable distribution schedule or formula and within a time period which it has established for the distribution of such funds.

L. An association shall publicly disclose its schedule for the distribution of funds for purse supplements to be made pursuant to R.S. 27:361(B)(4)(a). Excluding those funds statutorily dedicated to races restricted to accredited Louisiana breeds, the remaining funds shall be distributed proportionately according to the conditions of the races in which the remaining funds are used to insure parity among restricted and non-restricted races.

M. Whenever it appears to the executive director of the commission that a violation may have occurred, he shall furnish the apparent violator with a warning letter, sent by ordinary mail and by fax, affording the party 15 days from the date of the transmission of the letter to correct the violation.

N. If the apparent violation has not been timely corrected, the executive director, or his designee, shall within 10 days give written notice, by certified mail, to the party that its responsible officers are to appear before him for an informal conference to determine whether a violation has occurred and, if so, whether the violation can be corrected in the absence of imposing a fine or indefinitely suspending the license of the party, or refusing to allow the party to receive payments under this rule. Such informal hearing shall be conducted in accordance with the Administrative Procedure Act applicable to such hearing.

O. If the executive director, or his designee, determines after affording the party an opportunity for an informal conference that a violation has occurred and that a fine, license suspension, or other appropriate action should be taken, he shall file a *rule to show cause* with the commission for the notified party and its responsible officers to appear before the commission and show cause why disciplinary action or sanctions should not be imposed. The *rule to show cause* shall be forwarded by certified mail and by fax to the party. The cited party shall have 10 days from transmission, excluding holidays and weekends, to file with the commission a written response, under oath, and to submit a list of the names and addresses of all witnesses it desires to be subpoenaed for the hearing, including those to produce documents and other things. The failure to timely file a verified response may, in the commission's discretion, result in the cited party being refused to participate in the hearing on the *rule to show cause*.

P. At the conclusion of the hearing, the commission shall take action appropriate to the violation if it finds that one has occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:353, R.S. 27:354 and R.S. 27:361.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:435 (December 1976), LR 3:31 (January 1977), LR 4:278 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission LR 28:

Charles A. Gardiner III  
Executive Director

0201#010

## DECLARATION OF EMERGENCY

Office of the Governor  
Division of Administration  
Racing Commission

Pick Four (LAC 35:XIII.11601-11625)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective December 13, 2001 (extending its emergency

status), and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to adopt this chapter of rules to allow for "pick four" wagering at all Louisiana tracks, a new form of wagering potentially increasing the handle, thereby benefiting the racing associations, horsemen and the state. This is consistent with other major racing jurisdictions.

#### **Title 35**

### **HORSE RACING**

#### **Part XIII. Wagering**

#### **Chapter 116. Pick Four**

##### **§11601. Description; Selection; Principle**

A. The pick four is a form of pari-mutuel wagering. Bettors select the first horse in each of four consecutive races designated as the pick four by the permit holder. The principle of a pick four is in effect a contract by the purchaser of a pick four ticket to select the winners of each of the four races designated as the pick four. The sale of pick four tickets other than from pari-mutuel machines shall be deemed illegal and is prohibited.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

##### **§11603. Wagering Pool**

A. The pick four pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, trifecta, quinella or any other wagering pool. The pick four pool is a pool wherein the bettor is required to select four consecutive winning horses and is not a parlay.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

##### **§11605. Denominations**

A. Pick four tickets shall be sold in not less than \$1 denominations.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 28:

##### **§11607. Approval; Notation**

A. Races in which pick four pools are conducted shall be approved by the Commission and clearly designated in the program, and pick four tickets will be clearly marked as pick four tickets.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

##### **§11609. Procedure**

A. After the wagering closes for the first race of the four designated pick four races, the commission will be deducted from the pari-mutuel pool in accordance with Louisiana law. The remaining net pool, subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winner in all four races comprising the pick four and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

1. In the event no ticket is sold combining winners of the four races comprising the pick four, the holders of tickets

which include the winners of any three of the four races shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

2. In the event no ticket is sold combining the winners of three of the four races comprising the pick four, the holders of tickets which include the winners of any two of the four races shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

3. In the event no ticket is sold combining the winners of two of the four races comprising the pick four, the holders of tickets which include the winner(s) of any one of the four races shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

##### **§11611. No Winning Ticket**

A. In the event no winning ticket is sold that would require the distribution of the pick four pool as mentioned in §11609, the association shall make a complete refund of the pick four pool.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

##### **§11613. Cancelled Races**

A. If for any reason one or more of the races comprising the pick four is/are cancelled or declared "no race," the net pool shall be distributed as provided in §11609.

B. In the event the pick four pool is opened and wagers accepted, and all four races comprising the pick four are cancelled for any reason, the association shall make a complete refund of the pick four pool.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

##### **§11615. Dead Heats**

A. In the event of a dead heat for win between two or more horses in any pick four race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

##### **§11617. Closing Time; Disclosure**

A. No pari-mutuel ticket for the pick four pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the four races comprising the pick four except for such refunds on pick four tickets as required by this regulation, and no person shall disclose the number of tickets sold in the pick four pool or the number or amount of tickets selecting winners of pick four races until such time as the stewards have determined the last race comprising the pick four to be official. At the conclusion of the third of the four races comprising the pick four, the association may display potential distributions to ticket holders depending upon the outcome of the fourth race of the pick four.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

**§11619. Entry or Field**

A. Those horses constituting an entry or a field as defined within the rules of racing shall race in any pick four race as a single wagering interest for the purpose of the pick four pari-mutuel pool calculations and payouts to the public. A scratch after wagering has begun of any part of an entry or field selection in such race shall have no effect with respect to the status of such entry and/or field as a viable wagering interest.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

**§11621. Scratches and Non-Starters**

A. At anytime after wagering begins on the pick four pool should a horse, entire betting entry or field be scratched, excused or declared a non-starter in any pick four race, no further tickets selecting such horse, betting entry or field shall be issued, and wagers upon such horse, betting entry or field, for purposes of the pick four pool shall be deemed wagers upon the horse, betting entry or field upon which the most money has been wagered in the win pool at the close of win pool betting for such race. In the event of a money tie in the win pool, the tied horse, betting entry or field with the lowest running number, as designated by the official racing program, shall be designated as the favorite for substitution purposes. For the purpose of this Section, when horses are prevented from starting by any malfunction of the starting gate itself they shall be considered as having been excused by the stewards. After close of betting, there shall be no refund, except as provided in §11611 or §11613.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

**§11623. Display**

A. These rules shall be prominently displayed in the betting area of the association conducting the pick four.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

**§11625. Unforeseen Circumstances**

A. Should circumstances occur which are not foreseen in these rules, questions arising thereby shall be resolved by the association and/or commission in accordance with general pari-mutuel practices. Decisions regarding distribution of the pick four pools shall be final.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

Charles A. Gardiner III  
Executive Director

0201#012

**DECLARATION OF EMERGENCY**

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

**Home and Community Based Services Waiver  
ProgramC  
Mentally Retarded/Developmentally  
Disabled Waiver Slots**

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services adopted provisions governing the allocation of slots in the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver in a rule published June 20, 1997 (*Louisiana Register*, volume 23, number 6). The June 20, 1997 rule was subsequently amended to include Hammond Developmental Center residents or their alternates in the allocation of waiver slots previously reserved for residents of the Pinecrest Developmental Center (*Louisiana Register*, volume 24, number 3). The March 20, 1998 rule was later amended to increase the waiver slots allocated for foster children in the custody of the Office of Community Services and residents of public developmental centers and private ICF-MR facilities (*Louisiana Register*, volume 25, number 9). The Bureau of Community Supports and Services (BCSS) adopted an Emergency Rule to amend the September 20, 1999 rule by updating the waiver slot allocation methodology to better address the needs of targeted groups of citizens with disabilities (*Louisiana Register*, volume 27, number 9).

Adoption of this Emergency Rule does not pertain to the Notice of Intent which proposed to amend the MR/DD waiver service definitions contained in the July 20, 1990 Rule and to clarify service restrictions and documentation requirements (*Louisiana Register*, volume 27, number 10). The department decided to temporarily withdraw that proposed rule pending further evaluation by the BCSS.

This Emergency Rule is being adopted to continue the provisions contained in the October 1, 2001 Rule.

**Emergency Rule**

Effective January 30, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends the provisions contained in the September 20, 1999 rule governing the programmatic allocation of waiver slots for the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver as follows.

Programmatic Allocation of Slots for MR/DD Waiver  
The Bureau of Community Supports and Services (BCSS) request for services registry, formerly the MR/DD waiver

waiting list, shall be used to evaluate individuals for waiver eligibility. This request for services registry will be used to fill all waiver slots administered by the BCSS for persons with mental retardation or developmental disabilities. BCSS shall notify the next individual on the request for services registry, in writing, that a slot is available and that he/she is next in line to be evaluated for possible waiver slot assignment. The individual then chooses a case manager who will assist in the gathering of the documents needed for both the financial and medical certification eligibility process. If the individual is determined to be ineligible, either financially or medically, that individual is notified in writing. The next person on the request for services registry is notified as stated above and the process continues until an eligible person accepts a waiver slot. A waiver slot is assigned to an individual when eligibility is established and the individual is certified. Before placing a person in an appropriate slot, the person must consent to the removal of their name from the request for services registry. Utilizing these procedures, waiver slots shall be allocated to the targeted groups cited as follows.

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

2. A minimum of 160 slots shall be available for residents of Pinecrest and Hammond Developmental Centers, or their alternates, who have chosen to be deinstitutionalized, who successfully complete the financial and medical certification eligibility process, and are certified for the waiver. In situations where alternates are used, an alternate shall be defined as a resident of an ICF/MR facility who choose to apply for waiver participation, is eligible for the waiver, and vacates a bed in the ICF/MR facility for an individual being discharged from a publicly operated ICF/MR developmental center. A Pinecrest or Hammond Developmental Center resident must be given freedom of choice in selecting a private ICF-MR facility placement in the area of the resident's choice in order to designate the resident being discharged from the ICF-MR facility as an alternate. The bed being vacated in the ICF/MR facility is reserved for placement of a resident of a publicly operated ICF/MR developmental center for 120 days.

3. Any slots vacated during the waiver year shall be available to residents leaving any publicly operated ICF/MR or their alternates. In situations where alternates are used, an alternate shall be defined as a resident of an ICF/MR facility who choose to apply for waiver participation, is eligible for the waiver, and vacates a bed in the ICF/MR facility for an individual being discharged from a publicly operated ICF/MR developmental center. The bed being vacated in the ICF/MR is reserved for placement of a resident of a publicly operated ICF/MR developmental center for 120 days.

4. For those individuals who do not complete the transition process and move from either a publicly operated developmental center or an ICF/MR facility during the 120

day reservation period, the waiver slot will be converted to a community slot for processing. Authorization to exceed the 120-day reservation period may be granted by the BCSS as needed.

5. Ten waiver slots shall be used for qualifying persons with developmental disabilities who are clients of the Developmental Neuropsychiatric Program (DNP) administered by Southeast Louisiana State Hospital and are participating in a pilot project between the BCSS, the Office for Citizens with Developmental Disabilities, and the Office of Mental Health. The purpose of this pilot project is to develop coordinated wrap around services for individuals who choose to participate in the waiver and who meet the financial and medical eligibility requirements for the waiver.

6. Funded slots, not addressed above, shall be available for allocation to the next individual on the BCSS request for services registry who successfully completes the financial and medical certification eligibility process and are certified for the waiver.

The Bureau of Community Supports and Services is responsible for monitoring the utilization of waiver slots. At its discretion, the BCSS may reallocate specifically allocated slots to better meet the needs of citizens with disabilities in the State of Louisiana.

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, 446 North 12<sup>th</sup> Street, Baton Rouge, Louisiana 70802-4613. She is responsible for responding to all inquiries regarding this emergency rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood  
Secretary

0201#050

## **DECLARATION OF EMERGENCY**

### **Department of Revenue Policy Services Division**

#### **Certain Imported Cigarettes (LAC 61:I.5101)**

The Department of Revenue is exercising the provisions of the Administrative Procedure Act, R.S. 49:953(B), to adopt this emergency rule in accordance with the provisions of R.S. 13:5062(10) and R.S. 47:1511. The rule is needed to establish procedures for obtaining information for the enforcement of the conditions of the Master Settlement Agreement. This Emergency Rule is effective January 1, 2002, and will remain in effect for the maximum period allowed under the Administrative Procedure Act, or until adoption of the final rule, whichever occurs first.

In 1998, leading tobacco product manufacturers, 46 states including Louisiana, several territories and the District of Columbia, reached an agreement that settled existing and potential claims by the jurisdictions against the manufacturers. As part of the "Master Settlement Agreement," Louisiana was to implement either the model statute or a "qualifying statute" requiring escrow payments by tobacco product manufacturers who had not participated in the settlement. During the 1999 Regular Legislative Session, Act 721, effective July 1, 1999, enacted R.S.

13:5061 et seq., establishing certain requirements for tobacco product manufacturers. This Act included the requirement that nonparticipating manufacturers establish a reserve fund to guarantee a source of compensation against future health claims. The nonparticipating manufacturers are to pay into the reserve fund, or escrow account, a specified amount per unit sold during the respective year and are to annually certify to the attorney general that they are in compliance. The number of units sold is to be measured by the excise taxes collected by the state on cigarettes, including roll-your-owns, as defined at R.S. 13:5062(4). The provisions of R.S. 13:5062(10) state that the Department of Revenue shall adopt rules necessary to ascertain the amount of state excise tax paid each year on the products made by the nonparticipating tobacco manufacturers.

To obtain the requisite information, the Department of Revenue and the Tobacco Settlement Enforcement Unit of the Louisiana Department of Justice developed a schedule for reporting tobacco products made by nonparticipating manufacturers that were subsequently imported into Louisiana, either directly from the manufacturer or through a distributor, for sale, use, or consumption within this state. Since the schedule's distribution, a number of tobacco wholesale dealers have failed to comply with the Secretary's instructions to submit the schedule with their monthly return. Without complete compliance in providing the requested information to assure diligent enforcement of the provisions of R.S. 13:5061 et seq., the state of Louisiana faces the possible reduction in the payments under the Master Settlement Agreement and can be penalized for the loss of market share experienced by other participating states if such loss can be attributed to Louisiana's lack of enforcement of the provisions of the Master Settlement Agreement.

This emergency rule establishes the manner by which the information is to be provided and addresses penalties that may be imposed on registered tobacco dealers who fail to comply.

**Title 61  
REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 51. Tobacco Tax**

**§5101. Reporting of Certain Imported Cigarettes;  
Penalty**

A. Every registered wholesale tobacco dealer receiving cigarettes or roll-your-own tobacco made by a tobacco product manufacturer who is not participating in the Master Settlement Agreement, whether the product is purchased directly from the manufacturer or through a distributor, retailer or similar intermediary or intermediaries, must furnish the following information:

1. invoice number;
2. manufacturer's name and complete address;
3. quantity of product obtained, i.e. number of cigarettes or ounces of roll-your-own tobacco as defined at R.S. 13:5062(4);
4. product brand name;
5. whether the product was shipped directly from the manufacturer;
6. name and address of the seller if other than the manufacturer; and

7. any other information that may be requested by the secretary.

B. The information required by Subsection A is to be provided on a form prescribed by the secretary and must be submitted with and at the same time as the monthly tobacco report. If, during the reporting period, there were no purchases of a product made by a manufacturer who is not participating in the Master Settlement Agreement, such is to be indicated on the prescribed form and the form attached to the monthly tobacco report.

C. Any registered wholesale tobacco dealer who fails to comply with the reporting requirement or provides false or misleading information in response to Subsection A may be subject to the suspension of any permit issued under R.S. 47:844, in accordance with R.S. 47:844(A)(4).

D. When it is determined that a registered wholesale tobacco dealer is not in compliance with this rule, the secretary shall give that wholesale dealer written notice by registered mail of the noncompliance and request compliance within 15 days. Upon a second instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to, within 10 days, show cause why the wholesale dealer's permit shall not be suspended. Upon a third instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to show cause, on a date and time set by the secretary, as to why the wholesale dealer's permit shall not be suspended. If the wholesale dealer does not comply with the terms of this rule after the hearing, the secretary shall suspend the wholesale dealer's permit for a period of at least 30 days, or until such time as the dealer has become compliant. Failure to properly respond to written notification of noncompliance shall constitute a subsequent instance of noncompliance.

E. The information furnished under Subsection A may be disclosed as provided in R.S. 47:1508(B)(11).

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5062 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 27:

Cynthia Bridges  
Secretary

0201#019

**DECLARATION OF EMERGENCY**

**Department of Revenue  
Policy Services Division**

**Partnership Composite Returns and Payments  
(LAC 61:I.1401)**

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Revenue to use emergency procedures to establish rules, and R.S. 47:1511, which allows the department to make reasonable rules and regulations, the secretary of Revenue hereby finds that imminent peril to the public welfare exists and accordingly

adopts the following Emergency Rule. This Emergency Rule shall be effective January 1, 2002, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final rule, whichever comes first.

The rule is needed to provide guidelines to enable taxpayers to comply with the partnership composite return and payment requirements of R.S. 47:201.1 that go into effect January 1, 2002. Without these guidelines, taxpayers who are unable to comply will be subject to interest and penalties.

Act 21 of the 2000 Second Extraordinary Session of the Louisiana Legislature enacted R.S. 47:201.1 to require certain partnerships and limited liability companies with nonresident partners or members to file composite returns and make composite payments of tax for nonresident partners or members who do not agree to file and pay Louisiana income tax on their own behalf. This emergency rule will provide guidance concerning which partnerships and limited liability companies must file composite returns and make composite payments; when composite returns and payments are due; which partners or members are to be included on the composite return; and how partners or members who do not wish to be included in a composite return can enter into an agreement with the Department of Revenue to file and pay on their own behalf. This emergency rule will also allow certain publicly traded partnerships to request the Secretary's permission to file a composite return and make a composite payment on behalf of all partners of the partnership, including residents and corporations.

#### **Title 61**

### **REVENUE AND TAXATION**

#### **Part I. Taxes Collected and Administered by the Secretary of Revenue**

#### **Chapter 14. Income: Partnerships**

#### **§1401. Partnership Composite Return Requirement, Composite Payment Requirement, Exceptions**

A. Definitions. For the purpose of this rule, the following terms are defined.

*Corporation* Can entity that is treated as a corporation for state income tax purposes as set forth in R.S. 47:287.11(A).

*Engaging in Activities in this State* Having payroll, sales, or tangible property in this state, or intangible property with a Louisiana business situs.

*Individual Return* Ca Louisiana personal income tax return or a Louisiana fiduciary income tax return.

*Nonresident* Any person not domiciled, residing in, or having a permanent place of abode in Louisiana.

*Partner* Ca member or partner of an association that is treated as a partnership for state income tax purposes, including but not limited to, a member in a limited liability company or a partner in a general partnership, a partnership in commendam, or a registered limited liability partnership. A partner is the ultimate owner of a partnership interest; therefore someone holding or managing a partnership interest on behalf of another, such as a broker, is not a partner for purposes of this rule.

*Partnership* Any association that is treated as a partnership for state income tax purposes including, but not limited to, a general partnership, partnership in commendam, a registered limited liability partnership, or a limited liability

company. Because of R.S. 47:287.11(A), the above listed business associations that do not elect to be taxed as corporations for federal income tax purposes are treated as partnerships for Louisiana income tax purposes.

#### **B. Persons to be Included in a Composite Return**

1. Partnerships engaging in activities in this state that have nonresident partners are required to file a composite partnership return unless:

a. all nonresident partners are corporations or tax exempt trusts; or

b. all nonresident partners, other than corporations and tax exempt trusts, have a valid agreement on file with the Department of Revenue in which the partner has agreed to file an individual return and pay income tax on all income derived from or attributable to sources in this state.

2. Unless otherwise provided herein, corporate partners cannot be included in composite returns filed by a partnership. Corporate partners must file all applicable Louisiana tax returns, and must report all Louisiana source income, including income from the partnership in those returns.

3. Resident partners, other than corporations and tax-exempt trusts, may be included in a composite return.

4. A partnership that is a partner must be included in the composite return, unless that partner files an agreement with the partnership agreeing to file a composite return that reflects the Louisiana source income from the partnership of which it is a partner.

#### **C. Composite Return Requirements**

1. All nonresident partners, other than partners that are corporations or tax-exempt trusts, who were partners at any time during the taxable year and who do not have a valid agreement on file with the Department of Revenue must be included in the composite partnership return.

2. The due date of the composite return is the due date set forth for all income tax returns other than corporate returns.

3. A schedule must be attached to the composite return that includes the following information for every nonresident partner in the partnership:

a. the name of the partner;

b. the address of the partner;

c. the taxpayer identification number of the partner;

d. the partner's distributive share; and

e. whether or not that partner has an agreement on file with the Department of Revenue to file an individual return on his or her own behalf.

4. If a resident partner is included in the partnership's composite return, a schedule must be attached to the composite return that includes the following information for every resident partner included in the partnership composite return:

a. the name of the partner;

b. the address of the partner;

c. the taxpayer identification number of the partner;

d. the partner's distributive share.

5. The filing of a true, correct, and complete partnership composite return will relieve any nonresident partner properly included in the composite return from the duty to file an individual return, provided that the nonresident partner does not have any income from Louisiana sources other than that income reported in the

composite return. Inclusion in a partnership composite return shall not relieve a resident partner of the obligation to file a Louisiana income tax return.

6. Filing requirement the first year the partnership is subject to the composite return rules and issuance of special identification number. Every partnership that engages in activities in this state and that has nonresident partners will make an initial filing with the department.

a. Each partnership that is required to file a composite return will file its first composite return and make its first composite payment by the composite return due date. The partnership will be issued an identification number by the department upon its initial filing. This identification number shall be used on all partnership correspondence with the department, including subsequent composite returns filed by that partnership.

b. Each partnership that is not required to file a composite return because all its partners have filed agreements to file on their own behalf, must make an initial filing in which it files all agreements with the department of Revenue by the composite return due date. The partnership will be issued an identification number by the department upon its initial filing. This identification number shall be used on all partnership correspondence with the department, including the filing of additional agreements.

#### D. Composite Payment Requirement

1. All partnerships engaging in activities in this state that have nonresident partners that are not corporations or tax-exempt trusts shall make composite payments on behalf of all of their nonresident partners, other than corporate partners, who do not file an agreement to file an individual return and pay Louisiana income tax.

2. The composite payment is due on the earlier of the date of filing of the composite return or the due date of the composite return, without regard to extensions of time to file. An extension of time to file the composite return does not extend the time to pay the composite payment.

3. Each partner's share of the composite payment is the maximum tax rate for individuals multiplied by the partner's share of partnership income that was derived from or attributable to sources in this state. This computation applies whether or not the partnership income is distributed.

4. The composite payment to be made by the partnership is the sum of each partner's share of the composite payment for all partners included in the composite return.

5. For a nonresident partner whose only Louisiana income is from the partnership, amounts paid by the partnership on that partner's behalf will be treated as a payment of that partner's Louisiana individual income tax liability.

6. If a partner has any Louisiana source income in addition to the income from the partnership, amounts paid by the partnership on that partner's behalf will be treated as an advance payment of the tax liability shown on that partner's individually filed return.

E. Nonresident partner's agreement to file an individual return.

1. No composite return or composite payment is required from a partnership on behalf of a partner who has a valid agreement on file with the Department of Revenue in which the partner has agreed to file an individual return and

pay income tax on all income derived from or attributable to sources in this state.

2. The partner will execute the agreement and transmit the agreement to the partnership, on or before the last day of the month following the close of the partnership's taxable year.

3. The partnership will file the original agreement with the composite return filed for that taxable year. The partnership must keep a copy of the agreement on file.

4. The agreement must be in writing, in the form of an affidavit and must include all of the following:

a. a statement that the taxpayer is a nonresident partner or member;

b. the partner's name;

c. the partner's address;

d. the partner's social security number or taxpayer identification number;

e. the name of the partnership;

f. the address of the partnership;

g. the partnership's federal taxpayer identification number;

h. a statement that the taxpayer agrees to timely file a Louisiana individual income tax return and make payment of Louisiana individual income tax;

i. a statement that the taxpayer understands that the Louisiana Department of Revenue is not bound by the agreement if the taxpayer fails to abide by the terms of the agreement;

j. the statement that "under penalties of perjury, I declare that I have examined this affidavit and agreement and to the best of my knowledge, and belief, it is true correct and complete;" and

k. the signature of the partner.

5. Once an agreement is signed by the partner, transmitted to the partnership, and the partnership has filed the agreement with the Department of Revenue, the agreement will continue in effect until the partner or the Department of Revenue revokes the agreement, or the partner is no longer a partner in the partnership.

6. The agreement may be revoked by either the partner or the Department of Revenue as follows.

a. The partner may revoke the agreement at will. However, this revocation does not become effective until the first partnership tax year following the partnership tax year in which the revocation is transmitted to the partnership. The partner must send written notice of the revocation to the partnership. The partnership will forward the notice to the Department of Revenue. The partner may execute a new agreement, in the manner set forth in this Subsection, at any time.

b. The Department of Revenue may revoke the agreement only if the partner fails to comply with the terms of the agreement. This revocation is prospective only with respect to the partnership, and does not become effective until the first partnership tax year following the partnership tax year in which the revocation is transmitted to the partnership. The Department of Revenue must send written notice of the revocation to the partner and the partnership. The notice will be mailed to the partnership at the address given in the last return or report filed by the partnership. The notice will be mailed to the partner at the address provided in the agreement. If the Department of Revenue revokes an

agreement, the department may refuse to accept a subsequent agreement by that partner, unless the partner can show that the revocation was in error.

F. A partnership making a composite return and payment must furnish the following information to all partners included in the composite return:

1. The identification number that was issued to the partnership by the department under Subparagraph B.6.b above;
2. The amount of the payment made on the partner's behalf;
3. A statement that the amount paid on the partner's behalf can be used as an advance payment of that partner's Louisiana individual income tax liability for the same tax period;
4. The mailing address of the Louisiana Department of Revenue; and
5. The world wide web address of the Louisiana Department of Revenue, [www.rev.state.la.us](http://www.rev.state.la.us).

G Additional Provisions for Publicly Traded Partnerships

1. A publicly traded partnership, that is not treated as a corporation for federal income tax purposes may elect, with the prior approval of the secretary:

- a. not to accept agreements filed by partners under the provisions of Paragraph B.4 or Subsection E above; and
- b. to include all partners in its composite return and composite payment required by this section, including corporations and tax-exempt trusts.

2. This election must be applied for in writing and approved in writing by the secretary. Once approval is granted, the election will remain in effect until revoked by the partnership.

3. The composite payment to be made by the publicly traded partnership is the sum of each partner's share of the composite payment for all partners. Each partner's share of the composite payment is the maximum individual income tax rate multiplied by the partner's share of partnership income that was derived from or attributable to sources in this state. This computation applies whether or not the partnership income is distributed.

4. Inclusion in a partnership composite return filed by a publicly traded partnership shall not relieve resident partners, corporate partners, or nonresident partners who have other Louisiana source income of the obligation to file all applicable Louisiana tax returns, and report all Louisiana source income, including income from the partnership.

H. Nothing in this regulation shall restrict the secretary's authority to otherwise provide for efficient administration of the composite return and composite payment requirements of R.S. 47:201.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:201.1 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:

Cynthia Bridges  
Secretary

0201#034

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Office of Fisheries

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

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

This declaration of emergency shall become effective January 1, 2002, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

#### Title 76

#### WILDLIFE AND FISHERIES

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

#### Chapter 7. Experimental Fisheries Programs

#### §701. Permits

A - B.9. ...

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

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

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

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

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

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

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

**CB D.8. ...**

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

a. Closed Seasons, Times and Areas

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

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

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

b. Commercial Taking

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

ii. An experimental seine is a seine with a mesh size not less than 1" bar and 2" stretched and not more than 2" bar and 4" stretched, not exceeding 1200 feet in length. The experimental seine may not be constructed of monofilament.

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

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

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

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

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

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

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

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

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

d. Permits

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

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

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

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

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

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

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

a. Closed seasons, Times and Areas

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

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

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

b. Commercial Taking

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

ii. An experimental gill net is a gill net with a mesh size not less than 1" bar and 2" stretched and not more than 2" bar and 4" stretched, not exceeding 1200 feet in length.

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

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

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

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

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

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

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

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

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

d. Permits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

James H. Jenkins, Jr.  
Secretary

0112#017

## DECLARATION OF EMERGENCY

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

#### 2001 Fall Shrimp Season Extension

In accordance with emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967, and in accordance with R.S. 56:497A(9), which allows the Wildlife and Fisheries Commission to delegate authority to the Secretary of the Department to set seasons, and in accordance with the resolution adopted by the Wildlife and Fisheries Commission at its August 2001 meeting, which granted authority to the Secretary of the Department to change the closing date of the 2001 Fall Inshore Shrimp Season, notice is hereby given that the Secretary of the Department of Wildlife and Fisheries declares that the 2001 fall inshore shrimp season in Shrimp Management Zone 1 will close at sunset, Monday, December 31, 2001, except for that portion of Zone 1 extending north of the south shore of the Mississippi River Gulf Outlet, including Lake Pontchartrain and Lake Borgne, which shall close at 6:00 a.m., Friday, January 11, 2002.

James H. Jenkins, Jr.  
Secretary

0201#015

## DECLARATION OF EMERGENCY

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

2002 Commercial King Mackerel Season

In accordance with the emergency provisions of R.S. 49:953.B, the Administrative Procedure Act, R.S. 49:967 which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons and all rules and regulations pursuant thereto by emergency rule, and R.S. 56:6(25)(a) and 56:326.3 which provide that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following season and trip limit for the commercial harvest of king mackerel in Louisiana state waters:

The commercial season for king mackerel in Louisiana state waters will open at 12:01 a.m., July 1, 2002, and remain open until the allotted portion of the commercial king mackerel quota for the western Gulf of Mexico has been harvested or projected to be harvested.

The Commission grants authority to the Secretary of the Department of Wildlife and Fisheries to close the commercial king mackerel season in Louisiana state waters when he is informed by the National Marine Fisheries Service (NMFS) that the commercial king mackerel quota for the western Gulf of Mexico has been harvested or is projected to be harvested, such closure order shall close the season until 12:01 a.m., July 1, 2003, which is the date expected to be set for the re-opening of the 2003 commercial king mackerel season in federal waters.

The Commission also authorizes the Secretary to open an additional commercial king mackerel season in Louisiana state waters if he is informed that NMFS has opened an additional season and to close such season when he is informed that the commercial king mackerel quota for the western Gulf of Mexico has been filled, or is projected to be filled.

Nothing herein shall preclude the legal harvest of king mackerel by legally licensed recreational fishermen. Effective with any closure, no person shall commercially harvest, transport, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell king mackerel. Effective with the closure, no person shall possess king mackerel in excess of a daily bag limit. Provided however that fish in excess of the daily bag limit which were legally taken prior to the closure may be purchased, possessed, transported, and sold by a licensed wholesale/retail dealer if appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6 are properly maintained. Those other than wholesale/retail dealers may purchase such fish in excess of the daily bag limit from wholesale/retail dealers for their own use or for sale by a restaurant as prepared fish.

Thomas M. Gattle, Jr.  
Chairman

0112#029

## DECLARATION OF EMERGENCY

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

2002 Commercial Red Snapper Season

The red snapper fishery in the Gulf of Mexico is cooperatively managed by the Department of Wildlife and Fisheries (LDWF) and the National Marine Fisheries Services (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., generally three miles offshore. NMFS will provide rules for commercial harvest seasons for red snapper in the EEZ off of Louisiana. NMFS and the Gulf Council typically request consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

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

The season for the commercial fishery for red snapper in Louisiana state waters will open at 12 noon February 1, 2002. The commercial fishery for red snapper in Louisiana waters will close at 12 noon February 10, 2002, and thereafter open at 12 noon on the first of each month and close at 12 noon on the tenth of each month, for each month of 2002 until 2/3 of the 2002 commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested.

The Commission grants authority to the Secretary of the Department of Wildlife and Fisheries to set the closing date for the commercial red snapper season in Louisiana state waters when he is informed that 2/3 of the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested, such closure order shall close the season until 12 noon October 1, 2002, which is the date expected to be set for the re-opening of the 2002 commercial red snapper season in Federal waters.

The season for the commercial fishery for red snapper in Louisiana state waters will re-open at 12 noon October 1, 2002. The commercial fishery for red snapper in Louisiana waters will close at 12 noon October 10, 2002, and thereafter open at 12 noon on the first of each month and close at 12 noon on the tenth of each month for each month of 2002, until the remainder of the 2002 commercial quota is harvested.

The Commission grants authority to the Secretary of the Department of Wildlife and Fisheries to set the closing date for the commercial red snapper season in Louisiana state waters when he is informed that the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested; such closure order shall close the season until the date set for the opening of the year 2003 commercial red snapper season in federal waters.

The Commission also grants authority to the Secretary of the Department of Wildlife and Fisheries to change the opening dates for the commercial red snapper season in Louisiana state waters if he is informed by the Regional Administrator of NMFS that the season dates for the commercial harvest of red snapper in the federal waters of the Gulf of Mexico as set out herein have been modified, and that the Regional Administrator of NMFS requests that the season be modified in Louisiana state waters.

Nothing herein shall preclude the legal harvest of red snapper by legally licensed recreational fishermen. Effective with any commercial closure, no person shall commercially harvest, transport, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell red snapper. Effective with the closure, no person shall possess red snapper in excess of a daily bag limit. Provided however that fish in excess of the daily bag limit which were legally taken prior to the closure may be purchased, possessed, transported, and sold by a licensed wholesale/retail dealer if appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6 are properly maintained, and those other than wholesale/retail dealers may purchase such fish in excess of the daily bag limit from wholesale/retail dealers for their own use or for sale by a restaurant as prepared fish.

Thomas M. Gattle, Jr.  
Chairman

0112#027

**DECLARATION OF EMERGENCY**

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

**2002 Recreational Red Snapper Season**

The red snapper fishery in the Gulf of Mexico is cooperatively managed by the Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS)

with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally three miles offshore. Rules were established by NMFS to close recreational harvest season in the EEZ off of Louisiana effective midnight October 31, 2001, until 12:01 a.m., April 21, 2002, by reducing the bag limit to zero, and NMFS requested that consistent regulations be established in Louisiana waters. NMFS typically requests consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In order to enact regulations in a timely manner so as to have compatible regulations in place in Louisiana waters for the 2002 recreational red snapper season, it is necessary that emergency rules be enacted.

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

The season for the recreational fishery for red snapper in Louisiana state waters will remain closed until 12:01 a.m., April 21, 2002 by reducing the bag limit to zero for that time period. The season will open April 21, 2002 and continue until midnight October 31, 2002. If the secretary is notified that the opening and closing of Federal seasons is changed, he is hereby authorized to change the opening and closing dates for state waters accordingly.

Effective with the recreational red snapper season closure, any person, except those who possess a Class 1 or Class 2 commercial red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish and who are legally taking red snapper during an open commercial season, shall not possess any red snapper whether taken from within or without Louisiana territorial waters.

Thomas M. Gattle, Jr.  
Chairman

0112#028