

# Notices of Intent

## NOTICE OF INTENT

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

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

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Advisory Commission on Pesticides, proposes to amend regulations regarding the restrictions on applications of certain pesticides and their exemption to waiver of restrictions.

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

The Department will hold public meetings to discuss these amendments in Cheneyville in Rapides Parish and in Opelousas in St. Landry Parish.

These rules comply with and are enabled by R.S. 3:3203 and R.S. 3:3223.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXIII. Pesticide

#### Chapter 1. Advisory Commission on Pesticides

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

A. - O. ...

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

##### 1. Registration Requirements

a. The Commissioner hereby declares that prior to making any aerial application of 2,4-D or products containing 2,4-D, the aerial owner/operator must first register such intent by notifying the Division of Pesticides and Environmental Programs ("DPEP") in writing.

b. The Commissioner hereby declares that prior to making any aerial application of 2,4-D or products containing 2,4-D in the areas listed in LAC XXIII. 143. P. 3.a.i., the aerial owner/operator must have in his/her possession and shall be a part of the record keeping requirements, a written permit from the Division of Pesticides and Environmental Programs ("DPEP").

2. Grower Liability. Growers of crops shall not force or coerce applicators to apply 2,4-D or products containing 2,4-D to their crops when the applicators, conforming to the Louisiana Pesticide Laws and Rules and Regulations or to the pesticide label, deem it unsafe to make such applications. Growers found to be in violation of this section shall forfeit their right to use 2,4-D or products containing 2,4-D on their crops, subject to appeal to the Advisory Commission on Pesticides.

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

a. Aerial application of 2,4-D or products containing 2,4-D is limited to only permitted applications annually between April 1 and August 15 in the following parishes:

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

ii. Applications of 2,4-D or products containing 2,4-D shall not be made in any manner whatsoever by any commercial or private applicators between May 1 and August 15 in the areas listed in LAC XXIII.143.P.a.i., except upon written application to and the specific written authorization by the Assistant Commissioner of Agricultural and Environmental Services, or in his absence the Commissioner of Agriculture and Forestry.

4. Procedures for Permitting Applications of 2,4-D or products containing 2,4-D

a. Prior to any application of 2,4-D or products containing 2,4-D, approval shall be obtained in writing from the Louisiana Department of Agriculture and Forestry ("LDAF"). Such approval is good for two days from the date issued. Approval shall be obtained by growers or aerial applicators from the DPEP.

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

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

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

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

b. Aerial owner/operators shall maintain a record of 2,4-D or products containing 2,4-D applications.

6. Determination of Appropriate Action

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 10:193 (March 1984), LR 11:219 (March

1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 19:791 (September 1993), LR 21:668 (July 1993), LR 21:668 (July 1995), LR 28:

**Family Impact Statement**

The proposed amendments to rules XXIII.§143 regarding applications of certain pesticides in certain parishes should not have any known or foreseeable impact on any family as Defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed rule.

A public hearing will be held at the Louisiana Department of Agriculture and Forestry on February 28, 2002 at 9:30 a.m. in the auditorium. Interested persons may attend or you may submit written comments on the proposed rules to Bobby Simoneaux through the close of business on February 28, 2002 at 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding these rules is necessary.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Restrictions on Application of Certain Pesticides**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no estimated implementation costs or savings to the state or local governmental units. The department has current regulations for the registration of aerial owner/operators aerially applying 2,4-D. These rules required the department to permit, in writing, all aerial applications of 2,4-D during prescribed times. The minimal cost of these regulations is anticipated to be offset by reducing the investigations of citizen complaints caused by 2,4-D.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is estimated to be no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Estimated costs will be minimal to the directly affected persons or groups. The applications in the parishes, except for a portion of Allen parish, are currently under waiver restriction in existing regulations. There will be no applications allowed during the period of May 1 to August 1 annually. The economic benefits will be that the growers and owner/operators can expect less drift because the product should stay on the targeted area.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There should be no effect on competition and employment.

Skip Rhorer  
Assistant Commissioner  
0201#073

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
State Market Commission**

Labeling, Advertising and Displaying of Eggs  
(LAC 7:V.927 and 929)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Market Commission, proposes to amend regulation regarding the extension of the shelf life of fresh eggs and the labeling of all cartons of eggs with "Safe Handling" instructions.

Section 927 is being amended due to improvements in refrigeration and egg processing, use of inline production and a reduction in the delay between the processing and stocking of eggs in retail stores, which can be as early as the next day, allows the shelf life of eggs in retail stores to be extended from 30 to 45 days.

The United States Department of Agriculture is now requiring all egg containers or cartons containing eggs that have not been specifically processed to destroy all live salmonellae prior to distribution for sale to the ultimate consumer to be printed or stamped with a "Safe Handling" instruction. The purpose of the amendment to §929 is to bring state regulations in to conformity with the federal requirements and to aid in the development of uniform egg regulations on both a federal and state level.

These rules comply with and are enabled by R.S. 3:405 and 3:412.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part V. Advertising, Marketing and Processing**

**Chapter 9. Market Commission—Poultry and Eggs**

**Subchapter A. Certification of Official State Grades of**

**Poultry, Poultry Products and Shell Eggs**

**§927. Destination Tolerances; Additional Inspection**

**Fees**

A. No eggs shall be sold for resale to the consumers below U.S. Grade B, nor shall any eggs be sold as fresh eggs if the eggs are over 45 days of age. Eggs 45-60 days of age after package date may be returned to the processor or sent to a breaker. Eggs older than 60 days from date of package will be destroyed on the premises in the presence of the inspector/grader.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405 and 3:412.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Market Commission, LR 19:1124 (September 1993), amended LR 23:295 (March 1997), LR 28:

**§929. Labeling, Advertising and Displaying of Eggs**

A. - H. ...

I. All cartons and containers containing shell eggs that have not been specifically processed to destroy all live salmonellae prior to distribution for sale to the ultimate consumer shall contain the following statement on each such carton or container:

"SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm and cook foods containing eggs thoroughly."

AUTHORITY NOTE: Adopted in accordance with R.S. 3:405.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Market Commission, May 1969, amended by the Department of Agriculture and Forestry, Market Commission, LR 19:1123 (September 1993), amended LR 28:

**Family Impact Statement**

The proposed amendments to LAC 7:V.927 and 929 regarding the extension of the shelf life of fresh eggs and the labeling of all cartons of eggs with "Safe Handling" instructions should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed rule.

A public hearing will be held at the Louisiana Department of Agriculture and Forestry on February 27, 2002 at 9:30 a.m. in the auditorium. Interested persons may attend or you may submit written comments on the proposed rules to Wesley Young through the close of business on February 27, 2002 at 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding these rules is necessary.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Labeling, Advertising and Displaying of Eggs**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no estimated implementation costs or savings to the state or local governmental units. §927 is being amended because improvements in refrigeration and egg processing, use of inline production and a reduction in the delay between the processing and stocking of eggs in retail stores, which can be as early as the next day, allows the shelf life of eggs in retail stores to be extended from 30 to 45 days.

The United States Department of Agriculture is now requiring all egg containers or cartons containing eggs that have not been specifically processed to destroy all live salmonellae prior to distribution for sale to the ultimate consumer to be printed or stamped with a "Safe Handling" instruction. The purpose of the amendment to §929 is to bring state regulations in to conformity with the federal requirements

and to aid in the development of uniform egg regulations on both a federal and state level.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There should be no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There should be no costs to the directly affected persons or groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There should be no effect on competition and employment.

Skip Rhorer  
Assistant Commissioner  
0201#074

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 741C Louisiana Handbook for School Administrators  
CPolicy for Louisiana's Public Education  
Accountability System (LAC 28:I. 901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). Act 478 of the 1997 Regular Legislative Session called for the development of an Accountability System for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The State's Accountability System is an evolving system with different components. The proposed changes more clearly explain and refine the existing policy as follows: 1) Indicators of District Accountability, 2) Performance Labels to be assigned, and 3) District Accountability reports to be published.

**Title 28**

**EDUCATION**

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

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

**Subchapter A. Bulletins and Regulations**

**§ 901. School Approval Standards and Regulations**

Bulletin 741

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education LR 27:694-695 (May 2001); LR 27:695-702 (May 2001); LR 27:815-829 (June 2001), LR 28:

The Louisiana School and District Accountability System  
District Accountability

Every school district shall participate in a district accountability system based on the performance of schools

as approved by the Louisiana State Board of Elementary and Secondary Education (SBESE).

**Indicators for District Accountability**

There shall be two statistics reported for each school district for District Accountability:

- a District Performance Score (DPS); and
- a District Responsibility Index (DRI).

**District Performance Score (DPS)**

A District Performance Score (DPS) shall be the average of School Performance Scores (SPS) of all schools in a district.  
The DPS shall be reported as a numeric value.

**District Responsibility Index (DRI)**

A District Responsibility Index (DRI) shall be the weighted average of four indicators<sup>1</sup> with each indicator to be expressed as an index. A score of 100 = good and a score of 150 = excellent.

The proposed indicators includes:

1. Summer School;
2. The change in SPS for all schools relative to Growth Targets;
3. The change in LEAP 21 first-time passing rate from one year to the next; and
4. Certified Teachers.

<sup>1</sup> Indicators for school finance and graduation rate of high school students may be considered in the calculation of the District Responsibility Index at a later date.

is tested in the spring but not in the summer, the change for that student's score shall be "0." If a student is tested in the summer but not in the spring, the spring score shall be assumed to be the 10<sup>th</sup> percentile of students tested in the spring. Four averages shall be computed for each district - ELA and mathematics for both 4<sup>th</sup> and 8<sup>th</sup> grades. The district score shall be the weighted average of the four results. Students' summer school results shall be attributed to the district in which they took the summer test.

Formula for Converting Part B to an Index:  $5 * (\text{average scale score gain})$ .

Implications of Index Part B:  
A scale score gain of 20 points shall yield an Index of 100.  
A scale score gain of 30 points shall yield an Index of 150.

**Indicator 2: The Change in SPS for all schools relative to Growth Targets**

The Louisiana Department of Education shall compute the change in School Performance Scores (SPS) for all schools in the district. The relative change in SPS for all schools shall be the weighted sum of gains (weighted by the school's enrollment) divided by the weighted sum of Growth Targets.

Formula for Converting to an Index:  $100 * (\text{the relative change in SPS})$ .

Implications of Index:  
All schools meeting their Growth Targets shall yield an Index of 100.  
All schools achieving 1.5 times their Growth Targets shall yield an Index of 150.

Indicators and Weights	
Indicator	Weighting
1. Summer School.	30% (Part A 15% + Part B 15%)
2. The change in SPS for all schools relative to Growth Targets.	25%
3. The change in LEAP 21 first-time passing rate from one year to the next.	25% (Part A 12.5% + Part B 12.5%)
4. Certified Teachers	20% (Part A 15% + Part B 5%)

**Indicator 3: The change in LEAP 21 first-time passing rate from one year to the next**

The Louisiana Department of Education shall calculate the simple average of two statistics when calculating an index score for the change in LEAP 21 first-time passing rate from one year to the next. The scores of first-time test-takers shall be used for each statistic

Part A: percent passing

Formula for Converting Part A to an Index:  $3.333 * (\text{Percent passing} - 50)$ .

Implications of Index for Part A:  
An 80% pass rate shall yield an Index of 100.  
A 95% pass rate shall yield an Index of 150.

Part B: Improvement in percentage passing

Formula for Converting Part B to an Index:  $25 * (\text{change in passing rate} + 2)$ .

Implications of Index for Part B:  
A 2% increase yields an Index of 100.  
A 4% increase yields an Index of 150.

The results of Part B shall be limited to a minimum value of "0" and a maximum of "200."

**Indicator 1: Summer School**

The Louisiana Department of Education shall use two statistics when calculating an index score for summer school.

Part A: The percentage passing summer LEAP 21 tests.

The Louisiana Department of Education shall calculate the percentage passing summer LEAP 21 tests by using the number of students who scored *Unsatisfactory* in the previous spring as the denominator. The scores of first-time students shall be included (i.e., not students who are repeating the grade because of a score of *Unsatisfactory* in the previous year). This statistic shall include grades 4 and 8 and shall be weighted by the number of students failing each test in the previous spring. English language arts (ELA) and mathematics shall be counted separately. The numerator and denominator shall be the sum of counts in grade 4 ELA and mathematics plus grade 8 ELA and mathematics. Students' summer school results shall be attributed to the district in which they took the summer test.

Formula for Converting Part A to an Index:  $2.5 * (\text{percent passing} + 5)$ .

Implications of Index for Part A:  
35 percent passing of summer tests shall yield an Index of 100.  
55 percent passing of summer tests shall yield an Index of 150.

Part B: The change in scale scores on LEAP 21 from spring to summer for scores that are *Unsatisfactory* in the spring.

The Louisiana Department of Education shall use the mean change in scale scores on LEAP 21 from the spring to the summer administration, for all scores that were *Unsatisfactory* in the spring administration. The scores of first-time students shall be included (i.e. not students who are repeating the grade because of a score of *Unsatisfactory* in the previous year. If a student

**Indicator 4: Certified Teachers**

For the purpose of District Accountability, the Louisiana Department of Education shall define certified teachers as those who hold an A, B, or C certificate or who have been certified in accordance with the 12-Hour rule and whose certification includes 100% of the classes they teach. The Louisiana Department of Education shall use two statistics when calculating an index score for certified teachers.

Part A: The percentage of certified teachers in schools below the state average<sup>1</sup>

The Louisiana Department of Education shall calculate this statistic by multiplying 100 times the number of teachers in the district that are certified divided by the number of teachers in the district. If no schools in the district are scoring below the state average, Part A of this indicator shall not apply and the total weight of this indicator shall be applied to Part B.

Formula for Converting Part A to an Index:  $5^*$  (percent certified – 70)  
 Implications of Index for Part A:  
 90 percent of teachers certified shall yield an Index of 100.  
 100 percent of teachers certified shall yield an Index of 150.

Part B: The percentage of certified teaches in the district

The Louisiana Department of Education shall calculate this statistic by multiplying 100 times the number of teachers in the district that are certified divided by the number of teachers in the district.

Formula for Converting Part A to an Index:  $5^*$  (percent certified – 70)  
 Implications of Index for Part A: 90 percent of teachers certified shall yield an Index of 100.  
 100 percent of teachers certified shall yield an Index of 150.

<sup>1</sup>The Louisiana Department of Education calculates two state averages: a state average for K-8 schools and a state average for 9-12 and combination schools. Combination schools are schools that contain 10<sup>th</sup> and/or 11<sup>th</sup> grade and a 4<sup>th</sup> and/or 8<sup>th</sup> grade (i.e., a school with grades 7-12)

**Performance Labels**

A district shall not receive a label for its District Performance Score. A label shall be reported for the District Responsibility Index (DRI) and for each of the four indicators.

District Responsibility Index	Label
120.0 or more	Excellent
100.0 – 119.9	Very Good
80.0 – 99.9	Good
60.0 – 79.9	Poor
0.0 – 59.9	Unsatisfactory

**Corrective Actions**

The Louisiana Department of Education shall report district scores and labels on every school district. Consequences imposed on a district shall be based on its District Responsibility Index (DRI). Any district receiving a Performance Label of *Unsatisfactory* for its DRI shall become subject to an operational audit. If a district scores Unsatisfactory again within two years, the SBESE shall have the authority to act on the audit findings, including the withholding of funds to which the district might otherwise be entitled.

**Progress Report**

The Louisiana Department of Education shall publish a District Accountability Report. The report shall contain the labels for the DRI and for each of the four indicators. The report shall also contain the percent poverty, poverty ranking, and percentage of students enrolled in public education for the district

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Interested persons may submit written comments until 4:30 p.m., March 11, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
 Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 741C Louisiana Handbook for School Administrators C Policy for Louisiana's Public Education Accountability System**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no estimated implementation costs to state governmental units. The proposed changes more clearly explain and refine the existing policy as it pertains to the indicators of District Accountability, Performance Labels to be assigned, and District Accountability reports to be published.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections by state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There will be no estimated costs and/or economic benefits to persons or non-governmental groups directly affected.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on competition and employment.

Marlyn J. Langley  
 Deputy Superintendent  
 Management and Finance  
 0201#038

H. Gordon Monk  
 Staff Director  
 Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 746C Louisiana Standards for State Certification of School Personnel C Grade-Level Endorsements to Existing Certificates (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. The new certification structure provides add-on certification within the undergraduate program, but does not address grade-level endorsements to existing certificates. This Bulletin 746 policy provides conditions under which grade-level endorsements may be added to existing certificates, based on the new certification structure. This represents a new policy that will become effective in July, 2002. This action will allow Louisiana teachers to add grade-level endorsements to existing certificates, building upon initial certification areas provided through an undergraduate program of study. This will assist districts in more effective placement of teachers in areas of certification.

**Title 28  
 EDUCATION**

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

**§903. Teacher Certification Standards and Regulations  
 Bulletin 746**

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

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

**Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Grade-Level Endorsements to Existing Certificates**

The new certification structure contains "Additional Certifications" to be used as part of the undergraduate

program for persons pursuing credentials in teacher education. The same requirements are to be used for endorsements to certificates for adjacent grade-level structures.

BASIC CERTIFICATIONS (To which endorsements may be added)	ADD-ON CERTIFICATIONS		TOTAL HOURS
	NEW CERTIFICATIONS (Endorsement areas that can be added to adjacent grade-level structures only)	ADDITIONAL COURSES AND HOURS	
GRADES PK - 3	GRADES 1-6	Content Emphasis: Sciences 6 Hours Social Studies 6 Hours Mathematics 3 Hours	15 Hours
GRADES 1-6	GRADES PK - 3	Content Emphasis: Nursery School and Kindergarten 12 Hours	12 Hours
GRADES 1-6	GRADES 4-8 (Generic)	Content Emphasis: English 3 Hours Mathematics 3 Hours Science 4 Hours Social Studies 3 Hours	13 Hours
GRADES 4-8	GRADES 1-6	Reading/Language Arts and Math Emphasis: Reading/ Language Arts 9 Hours Mathematics 3 Hours	12 Hours
GRADES 1-6, GRADES 4-8, OR GRADES 7-12	Mild/Moderate Special Education	Special Education Emphasis*: Methods and Materials for Mild/Moderate Exceptional Children, Assessment and Evaluation of Exceptional Learners, Behavioral Management of Mild/Moderate Exceptional Children, and Vocational and Transition Services for Students with Disabilities 12 Hours  Practicum in Assessment and Evaluation of Mild/Moderate Exceptional Children 3 Hours (Note: This should not be required if students participate in student teaching that combines regular and special education teaching experiences.)	12 Hours  (Additional 3 Hour Practicum, if not integrated into other field-based experiences and student teaching)

\* \* \*

Interested persons may submit comments until 4:30 p.m., March 11, 2002, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Grade-Level Endorsements to Existing Certificates**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The new certification structure provides add-on certification within the undergraduate program but does not address grade-level endorsements to existing certificates. This Bulletin 746 policy provides conditions under which grade-level endorsements may be added to existing certificates, and the policy represents no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The policy will have no effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0201#040

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

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

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

The full text of these proposed rules may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

The proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., February 20, 2002, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge  
General Counsel

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Scholarship/Grant Programs

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

These rule changes clarify the definition of academic year (high school), add the definition of skill and occupational training, delete as not applicable the eligibility requirement to have not defaulted on a student loan, provide a deadline for submission of citizenship documentation, make the TOPS Tech core curriculum consistent with that of the Board of Elementary and Secondary Education (BESE), include additional programs to qualify under certain circumstances for less than full-time enrollment and as exceptions to the initial and continuous enrollment requirements, and provide a number of technical edits.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections is anticipated to result from these rule changes.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Program administrators, schools and recipients will benefit from clarified and correct rules.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this rule.

George Badge Eldredge  
General Counsel  
0201#042

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Tuition Trust Authority Office of Student Financial Assistance

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

The Louisiana Tuition Trust Authority (LATTA) announces its intention to amend rules of the Student Tuition and Revenue Trust (START Savings) Program (R.S. 3091-3099.2).

The full text of these proposed rules may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

This proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., February 20, 2002, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P. O. Box 91202, Baton Rouge, LA 70821-9201.

George Badge Eldredge  
General Counsel

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Student Tuition and Revenue Trust (START Saving) Program

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs or savings to state or local governmental units as a result of this change. Costs associated with the growth of the program caused by the participation of legal entities has been previously budgeted. The rule expands the definition of Qualified Higher Education Expenses, revises the definition of Room and Board to capture allowable costs, makes the initial account classifications of owners permanent and provides for the participation of "Legal Entities."

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections to the Office of Student Financial Assistance is anticipated to result from the revision.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule change benefits START Savings Plan participants by offering all the benefits of Section 529 of the Internal Revenue Code.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this rule.

George Badge Eldredge  
General Counsel  
0201#041

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Incorporation by Reference of 40 CFR 68  
(LAC 33:III.5901)(AQ223\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality regulations, LAC 33:III.5901 (Log #AQ223\*).

This proposed rule is identical to federal regulations found in 40 CFR part 68, July 1, 2000, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

This proposed rule incorporates by reference into LAC 33:III.5901 the corresponding federal regulations in 40 CFR part 68, July 1, 2000. In order that Louisiana can maintain equivalency with the U.S. Environmental Protection Agency (EPA) for this Part, new federal regulations, along with current federal regulations, must be updated and adopted into the LAC. This rulemaking satisfies that requirement. This incorporation by reference of 40 CFR part 68 is being done to keep Louisiana's Air Regulations current with their federal counterparts. The basis and rationale for this proposed rule are to maintain equivalency with the federal regulations.

This proposed rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

### Title 33

### ENVIRONMENTAL QUALITY

### Part III. Air

### Chapter 59. Chemical Accident Prevention and Minimization of Consequences

### Subchapter A. General Provisions

### §5901. Incorporation by Reference of Federal Regulations

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR part 68 (July 1, 2000).

\* \* \*

[See Prior Text in B – C.6]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:\*\*.

A public hearing will be held on February 25, 2002, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by AQ223\*. Such comments must be received no later than February 25, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ223\*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

0201#044

## NOTICE OF INTENT

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

LPDES Phase II Streamlining  
(LAC 33:IX.Chapter 23)(WP041\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.Chapter 23 (Log #WP041\*).

This proposed rule is identical to federal regulations found in 65 FR 30886-30913, Number 94, May 15, 2000, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

The proposed rule will streamline the LPDES program in the state regulations in accordance with the streamlining efforts of the EPA. This rule will eliminate redundant regulatory language, provide clarification, and remove or

streamline unnecessary procedures that do not provide any environmental benefits. This rule is necessary to maintain the federal authorization of the LPDES program. The basis and rationale for this rule are to mirror the federal regulations.

This proposed rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part IX. Water Quality**

**Chapter 23. The LPDES Program**  
**Subchapter A. Definitions and General Program Requirements**

**§2311. Purpose and Scope**

A. Scope of the LPDES Permit Requirement

1. The LPDES program requires permits for the discharge of pollutants from any point source into waters of the state. The terms pollutant, point source, and waters of the state are defined in LAC 33:IX.2313.

2. The permit program established under LAC 33:IX.Chapter 23.Subchapters A-D also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain an LPDES permit in accordance with Subsection A.1 of this Section, unless all requirements implementing Section 405(d) of the CWA applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under state permit programs approved by the administrator as adequate to assure compliance with section 405 of the CWA.

3. The state administrative authority may designate any person subject to the standards for sewage sludge use and disposal as a treatment works treating domestic sewage as defined in LAC 33:IX.2313, where he or she finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA Section 405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit under LAC 33:IX.2331 within 180 days of being notified by the state administrative authority that a permit is required. The state administrative authority's decision to designate a person as a treatment works treating domestic sewage under this Paragraph shall be stated in the fact sheet or statement of basis for the permit.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2313. Definitions**

A. The following definitions apply to LAC 33:IX.Chapter 23.Subchapters A-G. Terms not defined in this Section have the meaning given by the CWA.

\* \* \*

[See Prior Text]

*Animal Feeding Operation*—a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

a. animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

b. crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

\* \* \*

[See Prior Text]

*Aquaculture Project*—a defined managed water area that uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

\* \* \*

[See Prior Text]

*Bypass*—the intentional diversion of waste streams from any portion of a treatment facility.

\* \* \*

[See Prior Text]

*Concentrated Animal Feeding Operation*—an animal feeding operation that meets the criteria in LAC 33:IX.Chapter 23.Appendix B, or that the state administrative authority designates under LAC 33:IX.2335.C.

*Concentrated Aquatic Animal Production Facility*—a hatchery, fish farm, or other facility that meets the criteria in LAC 33:IX.Chapter 23.Appendix C, or that the state administrative authority designates under LAC 33:IX.2337.C.

\* \* \*

[See Prior Text]

*Municipal Separate Storm Sewer System*—as defined at LAC 33:IX.2341.B.4 and 7.

\* \* \*

[See Prior Text]

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

\* \* \*

[See Prior Text]

*Silvicultural Point Source*—as defined at LAC 33:IX.2343.B.1.

\* \* \*

[See Prior Text]

*Sludge-Only Facility*—any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to regulations promulgated in accordance with Section 405(d) of the CWA, and is required to obtain a permit under LAC 33:IX.2311.A.2.

\* \* \*

[See Prior Text]

*Storm Water*—storm water runoff, snow melt runoff, and surface runoff and drainage.

*Storm Water Discharge Associated With Industrial Activity*—as defined at LAC 33:IX.2341.B.14.

\* \* \*

[See Prior Text]

*Upset*—an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

\* \* \*

[See Prior Text]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:722 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2755 (December 2000), LR 28:

### §2317. Prohibitions

\* \* \*

[See Prior Text in A-A.9.a]

b. the existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The state administrative authority may waive the submission of information by the new source or new discharger required by this Paragraph if the state administrative authority determines that the state administrative authority already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this Paragraph is to be included in the fact sheet to the permit under LAC 33:IX.2445.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

### Subchapter B. Permit Application and Special LPDES Program Requirements

#### §2331. Application for a Permit

##### A. Duty to Apply

1. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 40 CFR Part 503, and who does not have an effective permit, except persons covered by general permits under LAC 33:IX.2345, excluded under LAC 33:IX.2315, or

a user of a privately owned treatment works unless the state administrative authority requires otherwise under LAC 33:IX.2361.M, must submit a complete application to the Office of Environmental Services, Permits Division in accordance with this Section and LAC 33:IX.Chapter 23.Subchapters E-G

\* \* \*

[See Prior Text In A.2-G.6]

#### 7. Effluent Characteristics

a. Information on the discharge of pollutants specified in this Subparagraph (except information on storm water discharges that is to be provided as specified in LAC 33:IX.2341). When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (See LAC 33:IX.2531). When no analytical method is approved, the applicant may use any suitable method, but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the state administrative authority may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfall. The requirements in Subsection G.7.f and g of this Section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the state administrative authority may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

b. Storm Water Discharges. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for storm water discharges under LAC 33:IX.2341.D may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the state administrative authority).

However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples, taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in LAC 33:IX.2341.C.1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in LAC 33:IX.2341 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The state administrative authority may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (See LAC 33:IX.2531), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

c. Reporting Requirements. Every applicant must report quantitative data for every outfall for the following pollutants:

- i. biochemical oxygen demand (BOD<sub>5</sub>);
- ii. chemical oxygen demand;
- iii. total organic carbon;
- iv. total suspended solids;
- v. ammonia (as N);
- vi. temperature (both winter and summer); and
- vii. pH.

d. The state administrative authority may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in Subsection G.7.c of this Section if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see Appendix A of this Chapter) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

i. the organic toxic pollutants in the fractions designated in Appendix D, Table I of this Chapter for the applicant's industrial category or categories unless the applicant qualifies as a small business under Subsection G.8 of this Section. Appendix D, Table II of this Chapter lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular

industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes. [See Notes 2 and 3 of this Section.]

ii. the pollutants listed in Appendix D, Table III of this Chapter (the toxic metals, cyanide, and total phenols).

f.i. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Appendix D, Table IV of this Chapter (certain conventional and nonconventional pollutants) are discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged that is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

ii. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Appendix D, Table II or III of this Chapter (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under Subsection G.7.e of this Section, are discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-4,6-dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-4,6-dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under Subsection G.8 of this Section is not required to analyze for pollutants listed in Appendix D, Table II of this Chapter (the organic toxic pollutants).

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Appendix D, Table V of this Chapter (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

h. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

i. uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5 trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

ii. knows or has reason to believe that TCDD is or may be present in an effluent.

8. Small Business Exemption. An applicant that qualifies as a small business under one of the following

criteria is exempt from the requirements in Subsection G.7.e.i or f.i of this Section to submit quantitative data for the pollutants listed in Appendix D, Table II of this Chapter (the organic toxic pollutants):

\*\*\*

[See Prior Text in G.8.a-O]

NOTE: At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice 40 CFR 122.21 (g)(7)(v)(A) (and the department hereby suspends LAC 33:IX.2331.G.7.e.i) and the corresponding portions of Item V-C of the NPDES (and LPDES) application Form 2C as they apply to coal mines. This revision continues that suspension.<sup>1</sup>

NOTE: At 46 FR 22585, Apr. 20, 1981, the Environmental Protection Agency suspended until further notice 40 CFR 122.21 (g)(7)(v)(A) (and the department hereby suspends LAC 33:IX.2331.G.7.e.i) and the corresponding portions of Item V-C of the NPDES (and LPDES) application Form 2C as they apply to:

\*\*\*

[See Prior Text in Note 2.a-c]

This revision continues that suspension.<sup>1</sup>

NOTE: At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice 40 CFR 122.21 (g)(7)(v)(A) (and the department hereby suspends LAC 33:IX.2331.G.7.e.i) and the corresponding portions of Item V-C of the NPDES (and LPDES) application Form 2C as they apply to:

\*\*\*

[See Prior Text in Note 3.a-e]

This revision continues that suspension.<sup>1</sup>

<sup>1</sup> EDITORIAL NOTE: The words "This revision" refer to the document published at 48 FR 14153, Apr. 1, 1983.

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[See Prior Text in P-Q.15]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:

**§2333. Signatories to Permit Applications and Reports**

\*\*\*

[See Prior Text in A-A.1.a]

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

NOTE: The department does not require specific assignments or delegations of authority to responsible corporate officers identified in Subsection A.1.a of this Section. The agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the state administrative authority to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation

to applicable corporate positions under Subsection A.1.b of this Section rather than to specific individuals.

\*\*\*

[See Prior Text in A.2-D]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2335. Concentrated Animal Feeding Operations**

\*\*\*

[See Prior Text in A]

B. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

\*\*\*

[See Prior Text in C-C.3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2337. Concentrated Aquatic Animal Production Facilities**

\*\*\*

[See Prior Text in A]

B. Reserved.

\*\*\*

[See Prior Text in C-C.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2339. Aquaculture Projects**

\*\*\*

[See Prior Text in A]

B. Definitions

*Designated Project Area*—the portions of the waters of the state within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) that, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2341. Storm Water Discharges**

\*\*\*

[See Prior Text in A-B.7.b]

c. owned or operated by a municipality other than those described in Subsection B.7.a or b of this Section and that are designated by the state administrative authority as

part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under Subsection B.7.a or b of this Section. In making this determination the state administrative authority may consider the following factors:

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[See Prior Text in B.7.c.i-B.12]

13. Reserved.

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[See Prior Text in B.14-C]

1. Individual Application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water that the state administrative authority is evaluating for designation (see LAC 33:IX.2443.C) under Subsection A.1.e of this Section, and are not a municipal separate storm sewer shall submit an LPDES application in accordance with the requirements of LAC 33:IX.2331 as modified and supplemented by the provisions of this Paragraph.

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[See Prior Text in C.1.a-a.v.(c)]

(d). any information on the discharge required under LAC 33:IX.2331.G.7.f and g;

\*\*\*

[See Prior Text in C.1.a.v.(e)-(f)]

vi. operators of a discharge that is composed entirely of storm water are exempt from the requirements of LAC 33:IX.2331.G.2, 3, 4, 5, and 7.c, e, and h; and

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[See Prior Text in C.1.a.vii-D.1.d.iv]

(a). a grid system consisting of perpendicular north-south and east-west lines spaced one-fourth mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

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[See Prior Text in D.1.d.iv.(b)-2.b]

c. Characterization Data. When quantitative data for a pollutant are required under Subsection D.2.c.i.(c) of this Section, the applicant must collect a sample of effluent in accordance with LAC 33:IX.2331.G.7 and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (See LAC 33:IX.2531). When no analytical method is approved, the applicant may use any suitable method, but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

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[See Prior Text in D.2.c.i-d.iii.(a)]

(b). describe a monitoring program for storm water discharges associated with the industrial facilities identified in Subsection D.2.d.iii of this Section, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing LPDES permit for a facility; oil and grease, COD,

pH, BOD<sub>5</sub>, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under LAC 33:IX.2331.G.7.f and g.

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[See Prior Text in D.2.d.iv-G.4.d]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:957 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2552 (November 2000), repromulgated LR 27:40 (January 2001), amended LR 28:

### §2345. General Permits

A. Coverage. The state administrative authority may issue a general permit in accordance with the following:

1. Area. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under Subsection A.2.b of this Section, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

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[See Prior Text in A.1.a-g]

2. Sources. The general permit may be written to regulate one or more categories or subcategories of discharges, sludge use, disposal practices, or facilities, within the area described in Subsection A.1 of this Section, where the sources within a covered subcategory of discharges are either:

- a. storm water point sources; or
- b. one or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory all:

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[See Prior Text in A.2.b.i-v]

3. Water Quality-Based Limits. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed in accordance with LAC 33:IX.2361, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

#### 4. Other Requirements

a. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

b. The general permit may exclude specified sources or areas from coverage.

#### B. Administration

1. In General. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of 40 CFR Part 124 or corresponding state regulations. Special procedures for issuance are found at 40 CFR 123.44 for states.

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[See Prior Text in B.2-C.3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2276 (October 2000), LR 26:2553 (November 2000), LR 28:

### Subchapter C. Permit Conditions

#### §2355. Conditions Applicable to All Permits

The following conditions apply to all LPDES permits. Additional conditions applicable to LPDES permits are in LAC 33:IX.2357. All conditions applicable to LPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved state regulations) must be given in the permit.

\* \* \*

[See Prior Text in A-M]

##### 1. Definitions

*Severe Property Damage*—substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

\* \* \*

[See Prior Text in M.2-N.4]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:724 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2553 (November 2000), LR 28:

#### §2359. Establishing Permit Conditions

\* \* \*

[See Prior Text in A]

B.1. For a state issued permit, an applicable requirement is a state statutory or regulatory requirement that takes effect prior to final administrative disposition of a permit. For a permit issued by EPA, an applicable requirement is a statutory or regulatory requirement (including any interim final regulation) that takes effect prior to the issuance of the permit. LAC 33:IX.2423 for the state and 40 CFR 124.14 for EPA (reopening of comment period) provides a means for reopening permit proceedings at the discretion of the state administrative authority when new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. For state-administered and EPA-administered programs, an applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in LAC 33:IX.2383.

\* \* \*

[See Prior Text in B.2-C]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

#### §2361. Establishing Limitations, Standards, and Other Permit Conditions

A.1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under Section 301 of the CWA or new source performance standards promulgated under Section 306 of the CWA, on case-by-case effluent limitations determined under Section 402(a)(1) of the CWA, or on a combination of the three, in accordance with LAC 33:IX.2469. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 40 CFR 122.29(d) (protection period).

##### 2. Monitoring Waivers for Certain Guideline-Listed Pollutants

a. The state administrative authority may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a LPDES permit to forego sampling of a pollutant found in LAC 33:IX.2533 if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

b. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

c. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

d. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis.

e. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

\* \* \*

[See Prior Text in B.1-2]

C. Reopener Clause. For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the state administrative authority shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under Section 405(d) of the CWA. The state administrative authority may promptly modify or revoke and reissue any permit containing the reopener clause required by this Subsection if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit or controls a pollutant or practice not limited in the permit.

\* \* \*

[See Prior Text in D-D.9]

E. Technology-Based Controls for Toxic Pollutants. Limitations established under Subsection A, B, or D of this Section, to control pollutants meeting the criteria listed in

Subsection E.1 of this Section. Limitations will be established in accordance with Subsection E.2 of this Section. An explanation of the development of these limitations shall be included in the fact sheet under LAC 33:IX.2445A.2.a.i.

1. Limitations must control all toxic pollutants that the state administrative authority determines (based on information reported in a permit application under LAC 33:IX.2331.G.7 or in a notification under LAC 33:IX.2357.A.1 or on other information) are or may be discharged at a level greater than the level that can be achieved by the technology-based treatment requirements appropriate to the permittee under LAC 33:IX.2469.C; or

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[See Prior Text in E.2-J.3]

K. Best management practices (BMPs) to control or abate the discharge of pollutants when:

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[See Prior Text in K.1-2]

3. numeric effluent limitations are infeasible; or  
4. the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA and the LEQA.

NOTE: Additional technical information on BMPs and the elements of BMPs is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B-93-004, NTIS No. PB 94-178324, ERIC No. W498; Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R-92-005, NTIS No. PB 92-235951, ERIC No. N482; Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R-92-001, NTIS No. PB 93-223550, ERIC No. W139; Storm Water Management for Industrial Activities; Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA No. 832/R-92-006, NTIS No. PB 92-235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R-92-002, NTIS No. PB 94-133782, ERIC No. W492. Copies of these documents (or directions on how to obtain them) can be obtained by contacting either the Office of Water Resource Center (using the EPA document number as a reference) at (202) 260-7786 or the Educational Resources Information Center (ERIC) (using the ERIC number as a reference) at (800) 276-0462. Updates of these documents or additional BMP documents may also be available. A list of EPA BMP guidance documents is available on the Office of Waste Management Home Page at <http://www.epa.gov/owm>. In addition, states may have BMP guidance documents. These EPA guidance documents are listed here only for informational purposes; they are not binding and EPA does not intend that these guidance documents have any mandatory regulatory effect by virtue of their listing in this note.

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[See Prior Text in L-P]

Q. Navigation. Any conditions that the secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 40 CFR 124.59.

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[See Prior Text in R-R.2]

S. In addition to the conditions established under LAC 33:IX.2359.A, each LPDES permit shall include conditions meeting the requirements in Subsections A-R of this Section, when applicable.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2282 (October 2000), LR 26:2764 (December 2000), LR 28:

### §2363. Calculating LPDES Permit Conditions

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[See Prior Text in A-G.5]

#### H. Internal Waste Streams

1. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by LAC 33:IX.2361.I shall also be applied to the internal waste streams.

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[See Prior Text in H.2-I]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 28:

### Subchapter D. Transfer, Modification, Revocation and Reissuance, and Termination of Permits

#### §2383. Modification or Revocation and Reissuance of Permits

A. When the state administrative authority receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see LAC 33:IX.2355), receives a request for modification or revocation and reissuance under LAC 33:IX.2407, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in Subsections A and B of this Section for modification or revocation and reissuance or both exist. If cause exists, the state administrative authority may modify or revoke and reissue the permit accordingly, subject to the limitations of LAC 33:IX.2407.B, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term (see LAC 33:IX.2407.B.2). If cause does not exist under this Section or LAC 33:IX.2385, the state administrative authority shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in LAC 33:IX.2385 for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in LAC 33:IX.Chapter 23.Subchapters E and F followed.

1. Causes for Modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

a. Alterations. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use

or disposal practice) that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit.

[NOTE: Certain reconstruction activities may cause the new source provisions of 40 CFR 122.29 to be applicable.]

b. Information. The state administrative authority has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For LPDES general permits (LAC 33:IX.2345) this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger LPDES permits (LAC 33:IX.2331, 40 CFR 122.29), this cause shall include any significant information derived from effluent testing required under LAC 33:IX.2331.K.5.f or H.4.c after issuance of the permit.

c. New Regulations. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

i. for promulgation of amended standards or regulations, when:

(a). the permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the secondary treatment regulations under LAC 33:IX.Chapter 23.Subchapter S; and

(b). EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and

(c). a permittee requests modification in accordance with LAC 33:IX.2407 within 90 days after *Federal Register* notice of the action on which the request is based;

ii. for judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with LAC 33:IX.2407 within 90 days of judicial remand;

iii. for changes based upon modified state certifications of NPDES permits, see 40 CFR 124.55(b).

d. Compliance Schedules. The state administrative authority determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an LPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline. See also LAC 33:IX.2385 (minor modifications) and Subsection A.1.n of this Section (LPDES innovative technology).

e. When the permittee has filed a request for a variance under CWA Section 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for fundamentally different factors

within the time specified in LAC 33:IX.2331 or 40 CFR 125.72(a).

f. 307(a) Toxics. When required to incorporate an applicable CWA section 307(a) toxic effluent standard or prohibition (see LAC 33:IX.2361.B).

g. Reopener. When required by the reopener conditions in a permit, which are established in the permit under LAC 33:IX.2361.C (for CWA toxic effluent limitations and standards for sewage sludge use or disposal, see also LAC 33:IX.2361.B) or 2719.E (pretreatment program).

h.i. Net Limits. Upon request of a permittee who qualifies for effluent limitations on a net basis under LAC 33:IX.2363.G.

ii. When a discharger is no longer eligible for net limitations, as provided in LAC 33:IX.2363.G.1.b.

i. Pretreatment. As necessary under LAC 33:IX.2715.E (compliance schedule for development of pretreatment program).

j. Failure to Notify. Upon failure of an approved state to notify, as required by the CWA Section 402(b)(3), another state whose waters may be affected by a discharge from the approved state.

k. Non-Limited Pollutants. When the level of discharge of any pollutant that is not limited in the permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the permittee under LAC 33:IX.2469.C.

l. Notification Levels. To establish a notification level as provided in LAC 33:IX.2361.F.

m. Compliance Schedules. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW that has received a grant under section 202(a)(3) of the CWA for 100 percent of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2) of the CWA. In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

n. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in LAC 33:IX.2349.B when:

i. the permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s); and

ii. the other entity fails to implement measure(s) that satisfy the requirement(s).

o. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

p. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under Section 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

q. Reserved

r. Land Application Plans. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

2. Causes for Modification or Revocation and Reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

a. cause exists for termination under LAC 33:IX.2387 or 2769, and the state administrative authority determines that modification or revocation and reissuance is appropriate;

b. the state administrative authority has received notification (as required in the permit, see LAC 33:IX.2355.L.3) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (LAC 33:IX.2381.B) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

3. Upon modification or revocation and reissuance of a permit for a privately-owned sewage treatment facility regulated by the Public Service Commission, the permittee shall comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W, unless a waiver or exemption has been granted under R.S. 30:2075.2(A)(6).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1524 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2283 (October 2000), LR 27:45 (January 2001), LR 28:

### §2387. Termination of Permits

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[See Prior Text in A-A.5]

B. The state administrative authority shall follow the applicable procedures in 40 CFR Part 124 or state procedures in terminating any LPDES permit under this Section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the state administrative authority may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the state administrative authority shall follow 40 CFR Part 124 or applicable state procedures for termination. Expedited permit termination procedures are not available to permittees that are subject to pending state and/or federal enforcement actions, including citizen suits brought under state or federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law.

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

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## Subchapter E. General Program Requirements

### §2403. Definitions

A. In addition to the definitions given in LAC 33:IX.2313 and 40 CFR 123.2 (LPDES) and 501.2 (sludge management), the definitions below apply to LAC 33:IX.Chapter 23.Subchapters E-G

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

*Application*—the standard forms for applying for a permit, including any additions, revisions, or modifications to the forms or forms approved by EPA for use in approved states, including any approved modifications or revisions.

*Appropriate Act and Regulations*—the Clean Water Act (CWA) and applicable regulations promulgated under those statutes. In the case of an approved state program, appropriate Act and regulations includes program requirements.

*CWA*—the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act of Federal Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217 and Pub. L. 95-576; 33 U.S.C. 1251 et seq.

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[See Prior Text]

*State Administrative Authority*—the chief administrative officer of any state, interstate, or tribal agency operating an approved program, or the delegated representative of the state administrative authority.

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[See Prior Text in B]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

### §2407. Modification, Revocation and Reissuance, or Termination of Permits

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[See Prior Text in A-B.3]

C.1. If the state administrative authority tentatively decides to terminate a permit under LAC 33:IX.2387.A or 2769 (for EPA-issued NPDES permits, only at the request of the permittee) or a permit under LAC 33:IX.2387.B (where the permittee objects), he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit that follows the same procedures as any draft permit prepared under LAC 33:IX.2409.

2. In the case of EPA-issued permits, a notice of intent to terminate or a complaint shall not be issued if the regional administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved state under 40 CFR 123.24(b)(1) (NPDES) or 40 CFR 501.14(b)(1) (sludge). In addition, termination of an NPDES permit for cause in accordance with LAC 33:IX.2387.B may be accomplished by providing written notice to the permittee, unless the permittee objects.

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[See Prior Text in D]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:725 (June 1997), LR 23:1524 (November 1997), amended by the Office of the Secretary, LR 25:662 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2415. Public Notice of Permit Actions and Public Comment Period**

\* \* \*

[See Prior Text in A-D.1.f]

g. for LPDES permits only (including those for sludge-only facilities), a general description of the location of each existing or proposed discharge point, the name of the receiving water, the sludge use and disposal practice(s), the location of each sludge treatment works treating domestic sewage, and use or disposal sites known at the time of permit application. For EPA-issued NPDES permits only, if the discharge is from a new source, a statement as to whether an environmental impact statement will be or has been prepared;

\* \* \*

[See Prior Text in D.1.h-F]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:725 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 28:

**§2423. Reopening of the Public Comment Period**

\* \* \*

[See Prior Text in A.1-C]

D. Public notice of any of the above actions shall be issued under LAC 33:IX.2415.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2425. Issuance and Effective Date of Permit**

A. After the close of the public comment period under LAC 33:IX.2415 on a draft permit, the state administrative authority shall issue a final permit decision. The state administrative authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on an LPDES permit. For the purposes of this Section a final permit decision means a final decision to issue, deny, modify, or revoke and reissue, or terminate a permit.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**Subchapter F. Specific Decisionmaking Procedures  
Applicable to LPDES Permits**

**§2445. Fact Sheets**

A. In addition to meeting the requirements of LAC 33:IX.2413, LPDES fact sheets shall contain:

1. any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal as required by LAC 33:IX.2317 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

2.a. when the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

i. limitations to control toxic pollutants under LAC 33:IX.2361.E;

ii. limitations on internal waste streams under LAC 33:IX.2363.I;

iii. limitations on indicator pollutants under LAC 33:IX.2469.G;

iv. limitations set on a case-by-case basis under LAC 33:IX.2469.C.2 or 3, or in accordance with Section 405(d)(4) of the CWA;

v. limitations to meet the criteria for permit issuance under LAC 33:IX.2317.A.9; or

vi. waivers from monitoring requirements granted under LAC 33:IX.2361.A;

b. for every permit to be issued to a treatment works owned by a person other than a state or municipality, an explanation of the state administrative authority's decision on regulation of users under LAC 33:IX.2361.M;

3. when appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application;

4. for EPA-issued NPDES permits, the requirements of any state certification under 40 CFR 124.53; and

5. for permits that include a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), a brief description of how each of the required elements of the land application plan are addressed in the permit.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**Subchapter K. Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2)(A), and (E) of the Act**

**§2505. Method of Application**

A. Written request for a variance under this Subchapter shall be submitted in duplicate to the state administrative authority in accordance with LAC 33:IX.2331.L.1 and LAC 33:IX.2405.

\* \* \*

[See Prior Text in B-B.3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**Subchapter P. Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act Reserved**

**§2560. Effective Date**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 23:199 (February 1997), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2561. Purpose and Scope**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2563. Definition**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2565. Applicability of Best Management Practices**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2567. Permit Terms and Conditions**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2569. Best Management Practices Programs**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:725 (June 1997), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**Subchapter T. General Pretreatment Regulations for Existing and New Sources of Pollution**

**§2705. Definitions**

A. For purposes of this Subchapter, except as discussed below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this regulation.

\* \* \*

[See Prior Text]

*Pretreatment Requirements*—any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

*Significant Industrial User*—

\* \* \*

[See Prior Text in A.Significant Industrial User.a-Editorial Note]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2733. Bypass**

A. Definitions

*Severe Property Damage*—substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

\* \* \*

[See Prior Text in B-D.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

A public hearing will be held on February 25, 2002, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by WP041\*. Such comments must be received no later than February 25, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of WP041\*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-First Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104

James H. Brent, Ph.D.  
Assistant Secretary

0201#043

## NOTICE OF INTENT

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

Use or Disposal of Sewage Sludge  
(LAC 33:VII.301 and IX.3103-3113)(WP034)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Solid Waste regulations, LAC 33:VII.301, and adopt the Water Quality regulations, LAC 33:IX.Chapter 23.Subchapter X (Log #WP034).

The proposed rule establishes standards, which consist of general and other requirements, pollutant limits, general and other management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works and of domestic septage. Standards are included for sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land, or sewage sludge fired in a sewage sludge incinerator. Also included are pathogen and alternative vector attraction reduction requirements for sewage sludge, a material derived from sewage sludge, or domestic septage applied to the land. Siting, operation, and financial assurance requirements are included for commercial blenders, composters, and mixers of sewage sludge or a material derived from sewage sludge. The rule includes the frequency of monitoring, recordkeeping requirements, and reporting requirements for Class I sludge management facilities and requirements for the person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill. The basis and rationale for this proposed rule are to establish regulations that will be in line with EPA regulations for the final use and disposal of sewage sludge. The adoption of this regulation will prepare the Department for future assumption of the Sewage Sludge Management Program. A benefit of assumption of the Sewage Sludge Management Program is that facilities will not be required to obtain both an EPA permit and a separate state permit for the use and disposal of sewage sludge. Upon assumption of the program, sewage sludge requirements will be a part of the LPDES permit or as a separate single LPDES general permit or, in the case of a sewage sludge incinerator, as a single air permit.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. The only impact this proposed rule may have on the family, as described in R.S. 49:972, is that the family budget may be affected if a municipality or private sanitary wastewater treatment system should choose to increase its sewer user fees. However, such increases

directly related to the implementation of this rule should be limited to very few facilities and would be difficult to predict.

## Title 33

### ENVIRONMENTAL QUALITY

#### Part VII. SOLID WASTE

#### Chapter 3. Scope and Mandatory Provisions of the Program

##### §301. Wastes Governed by These Regulations

All solid wastes as defined by the act and these regulations are subject to the provisions of these regulations, except as follows:

\* \* \*

[See Prior Text in A - A.7]

8. infectious waste or other hospital or clinic wastes that are not processed or disposed of in solid waste processing or disposal facilities permitted under these regulations; and

9. sewage sludge and domestic septage as defined by LAC 33:IX.Chapter 23.Subchapter X of the Water Quality regulations will be exempt from all requirements of LAC 33:VII, except for the transportation requirements in LAC 33:VII.503, 529, and 705, upon the date of receipt by the department of sewage sludge program authority from EPA in accordance with 40 CFR part 503 under the NPDES program. Provisions addressing sewage sludge and domestic septage found throughout these regulations will no longer apply once the department receives program authority.

\* \* \*

[See Prior Text in B - B.6]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2515 (November 2000), LR 28:

#### Part IX. Water Quality

#### Chapter 23. The LPDES Program

#### Subchapter X. Standards for the Use or Disposal of Sewage Sludge

##### §3101. General Provisions

###### A. Purpose and Applicability

###### 1. Purpose

a. This Subchapter establishes standards, which consist of general and other requirements, pollutant limits, general and other management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works and of domestic septage. Standards are included in this Subchapter for sewage sludge, a material derived from sewage sludge, and domestic septage that is applied to the land or sewage sludge fired in a sewage sludge incinerator. Also included in this Subchapter are pathogen and alternative vector attraction reduction requirements for sewage sludge, a material derived from sewage sludge, and domestic septage applied to the land and also the siting, operation, and financial assurance requirements for commercial blenders, composters, mixers, or preparers of sewage sludge or a material derived from sewage sludge.

b. The standards in this Subchapter include the frequency of monitoring, recordkeeping requirements, and

reporting requirements for Class I sludge management facilities as defined in Subsection H of this Section.

c. This Subchapter establishes requirements for the person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill.

d. In addition, this Subchapter contains specific prohibitions and restrictions regarding the use and disposal of sewage sludge.

## 2. Applicability

a. This Subchapter applies to:

i. any person who prepares sewage sludge or a material derived from sewage sludge;

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

iii. any person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill;

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

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

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

c. This Subchapter applies to sewage sludge fired in a sewage sludge incinerator, the sewage sludge incinerator, and the exit gas from a sewage sludge incinerator stack.

d. This Subchapter applies to the person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill (MSWL).

## B. Compliance Period

1. Except as otherwise specified in this Subchapter and in Subsection B.3 of this Section, compliance with the standards in this Subchapter shall be achieved as expeditiously as practicable, but in no case later than February 19, 1994. When compliance with the standards requires construction of new pollution control facilities, compliance with the standards shall be achieved as expeditiously as practicable, but in no case later than February 19, 1995.

2.a. The requirements for frequency of monitoring, recordkeeping, and reporting in this Subchapter for total hydrocarbons in the exit gas from a sewage sludge incinerator are effective February 19, 1994, or if compliance with the operational standard for total hydrocarbons in this Subchapter requires the construction of new pollution control facilities, February 19, 1995.

b. All other requirements for frequency of monitoring, recordkeeping, and reporting in this Subchapter are effective on July 20, 1993.

3.a. Unless otherwise specified in LAC 33:IX.3113, compliance with the requirements in LAC 33:IX.3113.B, beginning with the definition of *average daily concentration* through the definition of *wet scrubber*, 3113.D.3, 4, and 5, F.5, 6.a, 7, 8.e, and 10, and G.1.a and c shall be achieved as expeditiously as practicable, but in no case later than September 5, 2000. When new pollution control facilities must be constructed to comply with the revised requirements in LAC 33:IX.3113, compliance with the revised

requirements shall be achieved as expeditiously as practicable, but no later than September 4, 2001.

b. Compliance with the requirements in Subsection E.2, 3, and 4 of this Section shall be achieved as expeditiously as practicable, but in no case later than [Insert 2 years from effective date of this rule].

c. Upon the effective date of these regulations, those persons who have received an exemption under LAC 33:VII for any form of use or disposal of sewage sludge will have 180 days to submit an application for permit coverage under these regulations.

## C. Permits and Permitting Requirements

1.a. Except as exempted in Subsection C.2 of this Section, no person shall prepare sewage sludge or a material derived from sewage sludge; apply sewage sludge, a material derived from sewage sludge, or domestic septage to the land; or own or operate a sewage sludge incinerator without first obtaining a permit that authorizes such practice in accordance with the applicable requirements of this Subchapter and LAC 33:III.Chapter 5, in the case of sewage sludge incinerators.

b. The person who prepares sewage sludge or a material derived from sewage sludge and the person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land shall use the application forms indicated in LAC 33:IX.2331.A.2 and furnish the information requested in LAC 33:IX.2331.Q.

c. The owner/operator of a sewage sludge incinerator shall apply for a permit issued either under Title V of the 1990 amended Clean Air Act or other appropriate air quality permit and shall use the permit application forms indicated in LAC 33:IX.2331.A.2 and furnish the information requested in LAC 33:IX.2331.Q and LAC 33:III.Chapter 5. The permit shall be in accordance with all applicable requirements of this Subchapter and other applicable requirements of LAC 33:IX.Chapter 23.

2.a. The person who applies bagged sewage sludge or a bagged material derived from sewage sludge to the land is exempt from the requirement of obtaining a permit if the person applies bagged sewage sludge or a bagged material derived from sewage sludge that is Exceptional Quality as defined in Subsection H of this Section.

b. The person who applies bulk sewage sludge or a bulk material derived from sewage sludge to the land is exempt from the requirement of obtaining a permit if the person applies bulk sewage sludge or a bulk material derived from sewage sludge that was obtained from a facility with an Exceptional Quality Certification under LAC 33:IX.3103.J and that person provides proof to the state administrative authority that the bulk sewage sludge or the bulk material derived from sewage sludge was obtained from a facility with an Exceptional Quality Certification.

c. The state administrative authority may exempt any other person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land from the requirement of obtaining a permit, on a case-by-case basis, after determining that human health and the environment will not be adversely affected by the application of sewage sludge, a material derived from sewage sludge, or domestic septage to the land.

D. Sewage Sludge Disposed in a Municipal Solid Waste Landfill

1. The Municipal Solid Waste Landfill where sewage sludge is disposed must possess a permit issued under LAC 33:VII or subtitle C of the Solid Waste Disposal Act.

2. The person who produces sewage sludge that is disposed in a Municipal Solid Waste Landfill shall provide the necessary information to the owner/operator of the landfill where the sewage sludge is to be disposed to assure that the landfill will be in compliance with its permit requirements.

3. The person who produces sewage sludge that is disposed in a Municipal Solid Waste Landfill shall provide proof to the state administrative authority that the sewage sludge is being disposed at an approved landfill by furnishing the name, address, and permit number of the landfill to the state administrative authority.

**E. Prohibitions, Restrictions, and Additional or More Stringent Requirements**

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

b. No person shall use or dispose of sewage sludge, a material derived from sewage sludge, or domestic septage except in accordance with the requirements in this Subchapter.

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

3.a. To store, or storage of, sewage sludge, as defined in Subsection H of this Section, is allowed for a period not to exceed six consecutive months when:

i. necessary for the upgrade, repair, or maintenance of a treatment works treating domestic sewage or for agricultural storage purposes when the sewage sludge is to be used for beneficial use as defined in Subsection H of this Section;

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

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

b.i. The state administrative authority may approve the storage of sewage sludge for commercial blenders, composters, mixers, or preparers of sewage sludge or for purposes other than those listed in Subsection E.3.a of this Section, for a period greater than six consecutive months, if the person who stores the sewage sludge demonstrates that the storage of the sewage sludge will not adversely affect human health and the environment.

ii. The demonstration shall be in the form of an official request forwarded to the state administrative authority at least 90 days prior to the storage of the sewage sludge and shall include, but is not limited to:

(a). the name and address of the person who prepared the sewage sludge;

(b). the name and address of the person who either owns the land or leases the land where the sewage sludge is to be stored, if different from the person who prepared the sewage sludge;

(c). the location, by either street address or latitude and longitude, of the land;

(d). an explanation of why the sewage sludge needs to remain on the land;

(e). an explanation of how human health and the environment will not be affected;

(f). the approximate date when the sewage sludge will be stored on the land and the approximate length of time the sewage sludge will be stored on the land; and

(g). the final use and disposal method after the storage period has expired.

iii.(a). The state administrative authority shall make a determination as to whether or not the information submitted is complete and shall issue the determination within 30 days of having received the request. If the information is deemed incomplete, the state administrative authority will issue a notice of deficiency. The commercial blender, composter, mixer or preparer of sewage sludge shall have 45 days, thereafter, to respond to the notice of deficiency.

(b). Within 30 days after deeming the information complete, the state administrative authority will then make and issue a determination to grant or deny the request for the storage of sewage sludge.

4.a. The use of ponds, lagoons, or landfarms is allowed for the treatment of sewage sludge or domestic septage, as defined in Subsection H of this Section, only after the applicable air, solid waste, hazardous waste, and water discharge permits have been applied for and granted by the state administrative authority.

b. The person who makes use of a pond, lagoon, or landfarm to treat sewage sludge or domestic septage shall provide documentation to the state administrative authority that indicates the final use or disposal method for the sewage sludge or domestic septage and shall apply for the appropriate permit for the chosen final use or disposal in accordance with this Subchapter.

5. The application of domestic septage to a residential lawn or garden is prohibited.

6.a. The blending, composting, or mixing of sewage sludge with feedstock or supplements containing any of the materials listed in Table 1 of LAC 33:IX.3101.E or whose hazardous waste codes are those other than D002 or D003 is prohibited.

b. The state administrative authority may prohibit the use of other materials as feedstock or supplements if the use of such materials has a potential to adversely affect human health or the environment, as determined by the administrative authority.

<b>Table 1 of LAC 33:IX.3101.E Materials Prohibited from Feedstock or Supplements that are Blended, Composted, or Mixed with Sewage Sludge</b>	
Antifreeze	Pesticides
Automotive (lead-acid) batteries	Photographic supplies
Brake fluid	Propane cylinders
Cleaners (drain, oven, toilet)	Treated wood containing the preservatives CCA and/or PCP
Gasoline and gasoline cans	Tubes and buckets of adhesives, caulking, etc.
Herbicides	Swimming pool chemicals
Household (dry cell) batteries	Unmarked containers
Oil-based paint	Used motor oil

7.a. The use of sewage sludge for daily cover at landfill facilities is prohibited.

b. The use of sewage sludge as interim and final cover for landfill facilities is allowed only if the sewage sludge meets the requirements and is used in accordance with the requirements in LAC 33:IX.3103.

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

b. Nothing in this Subchapter precludes a local government, district, or political subdivision thereof or interstate agency from imposing additional or more stringent requirements than the requirements presented in this Subchapter.

#### F. Exclusions

1. Treatment Processes. This Subchapter does not establish requirements for processes used to treat domestic sewage or for processes used to treat sewage sludge prior to final use or disposal, except as provided in LAC 33:IX.3111.C and D.

2. Selection of a Use or Disposal Practice. This Subchapter does not require the selection of a sewage sludge use or disposal practice. The determination of the manner in which sewage sludge is used or disposed is to be made by the person who prepares the sewage sludge.

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

a. Except for the co-firing of sewage sludge with auxiliary fuel, as defined in LAC 33:IX.3113.B, this Subchapter does not establish requirements for sewage sludge co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired.

b. This Subchapter does not establish requirements for sewage sludge co-fired with auxiliary fuel if the auxiliary fuel exceeds 30 percent of the dry weight of the sewage sludge and auxiliary fuel mixture.

4. Sludge Generated at an Industrial Facility. This Subchapter does not establish requirements for the use or disposal of sludge generated at an industrial facility during the treatment of industrial wastewater, including sewage sludge generated during the treatment of industrial wastewater combined with domestic sewage.

5. Hazardous Sewage Sludge. This Subchapter does not establish requirements for the use or disposal of sewage sludge or a material derived from sewage sludge that is hazardous under 40 CFR part 261 and/or LAC 33:V.

6. Sewage Sludge with High PCB Concentration. This Subchapter does not establish requirements for the use or disposal of sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

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

8. Grit and Screenings. This Subchapter does not establish requirements for the use or disposal of grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

9. Drinking Water Treatment Sludge. This Subchapter does not establish requirements for the use or disposal of sludge generated during the treatment of either surface water or groundwater used for drinking water.

10. Commercial and Industrial Septage. This Subchapter does not establish requirements for the use or disposal of commercial septage, industrial septage, a mixture of domestic septage and commercial septage, or a mixture of domestic septage and industrial septage.

11. Transporters and Haulers of Sewage Sludge or Domestic Septage. This Subchapter does not establish requirements for the transporting and hauling of sewage sludge or domestic septage. Transporters and haulers of sewage sludge or domestic septage must comply with all of the applicable requirements of LAC 33:VII pertaining to the transporting or hauling of sewage sludge or domestic septage.

#### G. Sampling and Analysis

##### 1. Sampling

a. The permittee shall collect and analyze representative samples of sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land and sewage sludge fired in a sewage sludge incinerator.

b. The permittee shall create and maintain records of sampling and monitoring information that shall include:

- i. the date, exact place, and time of sampling or measurements;
- ii. the individual(s) who performed the sampling or measurements;
- iii. the date(s) analyses were performed;
- iv. the individual(s) who performed the analysis;
- v. the analytical techniques or methods used; and
- vi. the results of such analysis.

2. Methods. The materials listed below are incorporated by reference in this Subchapter. The materials are incorporated as they exist on the date of approval, and notice of any change in these materials will be published in the *Louisiana Register*. They are available for inspection at the Office of the Federal Register, 7th Floor, Suite 700, 800 North Capitol Street, NW, Washington, DC, and at the Office of Water Docket, Room L-102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. Copies may be obtained from the standard producer or publisher listed in the regulation. Information regarding other sources of these documents is available from the Department of Environmental Quality, Office of Environmental Services, Permits Division. Methods in the materials listed below shall be used to analyze samples of sewage sludge.

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

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

c. Helminth Ova. Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal

Sludges," EPA 600/1-87-014, 1987. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB 88-154273/AS).

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

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

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

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

h. Incineration of Sewage Sludge—Standards of Performance and Particulate Matter. Materials and Methods at 40 CFR part 60 as incorporated by reference at LAC 33:III.3003.

i. Incineration of Sewage Sludge – National Emission Standards for Beryllium and for Mercury. Materials, Methods, and Standards at 40 CFR part 61 as incorporated by reference at LAC 33:III.5116.

j. Composting of Sewage Sludge. "Test Methods for the Examination of Composting and Compost," The US Composting Council Research and Education Foundation and USDA, TMECC Website: <http://tmecc.org/tmecc/index.html>.

#### H. General Definitions

*Apply Sewage Sludge or Sewage Sludge Applied to the Land*—land application of sewage sludge.

*Base Flood*—a flood that has a 1 percent chance of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).

*Beneficial Use*—using sewage sludge or a material derived from sewage sludge or domestic septage for the purpose of soil conditioning or crop or vegetative fertilization in a manner that does not pose adverse effects upon human health and the environment or cause any deterioration of land surfaces, soils, surface waters, or groundwater.

*Bulk Sewage Sludge*—sewage sludge that is not sold or given away in a bag or other container for application to the land.

*Class I Sludge Management Facility*—for the purpose of this Subchapter:

a. any publicly owned treatment works (POTW) or privately owned wastewater treatment device or system, regardless of ownership, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage;

b. the person who prepares sewage sludge or a material derived from sewage sludge, including commercial blenders, composters, mixers, or preparers;

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

d. the person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land.

*Commercial Blender, Composter, Mixer, or Preparer of Sewage Sludge*—any person who prepares sewage sludge or a material derived from sewage sludge for monetary profit or other financial consideration and either the person is not the generator of the sewage sludge or the sewage sludge was obtained from a facility or facilities not owned by or associated with the person.

*Cover Crop*—a small grain crop, such as oats, wheat, or barley, not grown for harvest.

*Domestic Septage*—either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

*Domestic Sewage*—waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

*Dry Weight Basis*—calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100 percent solids content).

*Exceptional Quality*—sewage sludge or a material derived from sewage sludge that meets the ceiling concentrations in Table 1 of LAC 33:IX.3103.D, the pollutant concentrations in Table 3 of LAC 33:IX.3103.D, the pathogen requirements in LAC 33:IX.3111.C.1, one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h, and the concentration of PCBs of less than 10 mg/kg of total solids (dry weight).

*Feed Crops*—crops produced primarily for consumption by animals.

*Feedstock*—primarily biologically decomposable organic material that is blended, mixed, or composted with sewage sludge.

*Fiber Crops*—crops such as flax and cotton.

*Food Crops*—crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

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

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

*Land Application*—the beneficial use of sewage sludge, a material derived from sewage sludge, or domestic septage by either spraying or spreading onto the land surface,

injection below the land surface, or incorporation into the soil.

*Other Container*—either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

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

*Person Who Prepares Sewage Sludge*—either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

*Pollutant*—an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the administrative authority, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

*Pollutant Limit*—a numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

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

*Surface Disposal*—the use or disposal of sewage sludge that does not meet the criteria of *land application* as defined in this Subsection. This may include, but is not limited to, ponds, lagoons, sewage sludge only landfills (monofills), or landfarms.

*Supplements*—for the purpose of this Subchapter, materials blended, composted, or mixed with sewage sludge or other feedstock and sewage sludge in order to raise the moisture level and/or to adjust the carbon to nitrogen ratio, and materials added during composting or to compost to provide attributes required by customers for certain compost products.

*To Store, or Storage of, Sewage Sludge*—the temporary placement of sewage sludge on land.

*To Treat, or Treatment of, Sewage Sludge or Domestic Septage*—the preparation of sewage sludge or domestic septage for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

*Treatment Works*—either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

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

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

### §3103. Land Application

#### A. Applicability

1. This Section applies to any person who prepares sewage sludge or a material derived from sewage sludge that is applied to the land; to any person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land; to sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land; and to the land on which sewage sludge, a material derived from sewage sludge, or domestic septage is applied.

2.a.i. The general requirements in Subsection C.1 of this Section, the other requirements in Subsection E.1 of this Section, the general management practices in Subsection C.2.a of this Section, and the other management practices in Subsection E.2 of this Section do not apply when bulk sewage sludge is applied to the land if the bulk sewage sludge is Exceptional Quality as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

ii. The general requirements in Subsection C.1 of this Section, the other requirements in Subsection E.1 of this Section, the general management practices in Subsection C.2.a of this Section, and the other management practices in Subsection E.2 of this Section do not apply when a bulk material derived from sewage sludge is applied to the land if the derived bulk material is Exceptional Quality as defined in LAC 33:IX.3101.H of this Section and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

b. The state administrative authority may apply any or all of the general requirements in Subsection C.1 of this Section, the other requirements in Subsection E.1 of this Section, the general management practices in Subsection C.2.a of this Section and the other management practices in Subsection E.2 of this Section to the bulk sewage sludge in Subsection A.2.a.i of this Section and the bulk material in Subsection A.2.a.ii of this Section on a case-by-case basis after determining that any or all of the requirements or management practices are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the bulk sewage sludge or bulk material derived from sewage sludge to the land.

3.a.i. The general requirements in Subsection C.1 of this Section and the general management practices in Subsection C.2 of this Section do not apply if sewage sludge sold or given away in a bag or other container is Exceptional Quality as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

ii. The general requirements in Subsection C.1 of this Section and the general management practices in Subsection C.2 of this Section do not apply if a material derived from sewage sludge is sold or given away in a bag or other container and the material is Exceptional Quality as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

iii. The general requirements in Subsection C.1 of this Section and the general management practices in

Subsection C.2 of this Section do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived is Exceptional Quality as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

b. The state administrative authority may apply any or all of the general requirements in Subsection C.1 of this Section and the general management practices in Subsection C.2 of this Section to the sewage sludge in Subsection A.3.a.i of this Section or the derived material in Subsection A.3.a.ii or iii of this Section on a case-by-case basis after determining that the general requirements or the general management practices are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the sewage sludge or derived material to the land.

#### B. Special Definitions

*Agricultural Land*—land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

*Agronomic Rate*—

a. the whole sludge application rate (dry weight basis) designed:

i. to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; and

ii. to minimize the amount of nitrogen in the sewage sludge that is not utilized by the crop or vegetation grown on the land and either passes below the root zone to the groundwater or gets into surface waters during storm events;

b. agronomic rate may be extended to include phosphorus to application sites that are located within the drainage basin of water bodies that have been determined by the state administrative authority to be impaired by phosphorus.

*Annual Pollutant Loading Rate*—the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

*Annual Whole Sludge Application Rate*—the maximum amount of sewage sludge (dry weight basis) that can be applied to a unit area of land during a 365-day period.

*Cumulative Pollutant Loading Rate*—the maximum amount of an inorganic pollutant that can be applied to an area of land.

*Forest*—a tract of land thick with trees and underbrush.

*Monthly Average*—the arithmetic mean of all measurements taken during the month.

*Pasture*—land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

*Public Contact Site*—land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

*Range Land*—open land with indigenous vegetation.

*Reclamation Site*—drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and construction sites.

#### C. General Requirements and General Management Practices

##### 1. General Requirements

a.i. When a person who prepares sewage sludge provides the sewage sludge to another person who prepares the sewage sludge, the person who receives the sewage sludge shall comply with the requirements in this Subchapter.

ii. The person who provides the sewage sludge shall provide the person who receives the sewage sludge the following information:

(a). the name, mailing address, and location of the facility or facilities of the person providing the sewage sludge;

(b). the total dry metric tons being provided per 365-day period; and

(c). a description of any treatment processes occurring at the providing facility or facilities, including blending, composting, or mixing activities and the treatment to reduce pathogens and/or vector attraction reduction.

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

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

d. Sewage sludge, a material derived from sewage sludge, or domestic septage shall not be applied to the land until either a determination has been made by the administrative authority that the land application site is a legitimate beneficial use site or the person who applies the sewage sludge or a material derived from sewage sludge to the land furnishes to the administrative authority written documentation from a qualified, independent third party, such as the Louisiana Cooperative Extension Service or the Louisiana Department of Agriculture, that the land application site is a legitimate beneficial use site.

##### 2. General Management Practices

a. All Sewage Sludge, a Material Derived from Sewage Sludge, or Domestic Septage

i. All sewage sludge or a material derived from sewage sludge shall be applied to agricultural land, forest, a public contact site, or a reclamation site only at a whole sludge application rate that is equal to or less than the agronomic rate for the sewage sludge or a material derived from sewage sludge, unless, in the case of a reclamation site, otherwise specified by the permitting authority.

ii. Sewage sludge, a material derived from sewage sludge, or domestic septage shall be applied to the land only in accordance with the requirements pertaining to slope in Table 1 of LAC 33:IX:3103.C.

iii. In addition to the restrictions addressed in Subsection C.2.a.ii of this Section, all sewage sludge, a material derived from sewage sludge, or domestic septage having a concentration of PCBs equal to or greater than 10 mg/kg of total solids (dry wt.) must be incorporated into the soil regardless of slope.

iv. When sewage sludge, a material derived from sewage sludge, or domestic septage is applied to agricultural land, forest, or a reclamation site, the following buffer zones shall be established for each application area, unless otherwise specified by the state administrative authority:

(a). private potable water supply well - 300 feet, unless special permission is granted by the private potable water supply owner;

(b). public potable water supply well, surface water intake, treatment plant, or public potable water supply elevated or ground storage tank - 300 feet, unless special permission is granted by the Department of Health & Hospitals;

(c). established school, institution, business, or occupied residential structure - 200 feet, unless special permission is granted by a qualified representative of the established school, institution, business, or occupied residential structure; and

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

v. Sewage sludge, a material derived from sewage sludge, or domestic septage shall not be applied to agricultural land, forest, or a reclamation site if the water table is less than three feet below the zone of incorporation at the time of application.

vi. No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365-day period if the annual application rate in Subsection D.3 of this Section has been reached during that period.

b. Sewage Sludge Sold or Given Away in a Bag or Other Container

i. Sewage sludge sold or given away in a bag or other container shall not be applied to the land at a rate that would cause any of the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded.

ii. The permittee shall either affix a label to the bag or other container holding sewage sludge that is sold or given away for application to the land, or shall provide an information sheet to the person who receives sewage sludge sold or given away in a bag or other container for application to the land. The label or information sheet shall contain the following information:

(a). the name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land;

(b). a statement that application of the sewage sludge to the land is prohibited except in accordance with the instructions on the label or information sheet;

(c). the annual whole sludge application rate for the sewage sludge that does not cause any of the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded; and

(d). concentration of PCBs in mg/kg of total solids (dry wt.).

Table 1 of LAC 33:IX.3103.C	
Slope Limitations for Land Application of Sewage Sludge or Domestic Septage	
Slope Percent	Application Restriction
0-3	None, except drainage to prevent standing water shall be provided.
3-6	A 100-foot vegetated runoff area should be provided at the down slope end of the application area if a liquid is applied. Measures should be taken to prevent erosion.
6-12	Liquid material must be injected into the soil. Solid material must be incorporated into the soil if the site is not covered with vegetation. A 100-foot vegetated runoff area is required at the down slope end of the application area for all applications. Measures must be taken to prevent erosion. Terracing may be required if deemed a necessity by the state administrative authority to prevent runoff from the land application site and erosion.
>12	Unsuitable for application unless terraces are constructed and a 200-foot vegetated buffer area with a slope of less than 3 percent is provided at the down slope edge of the application area and the material is incorporated (solid material) and injected (liquid material) into the soil. Measures must be taken to prevent runoff from the land application site and to prevent erosion.

#### D. Pollutant Limits

##### 1. Sewage Sludge

a. Bulk sewage sludge or sewage sludge sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of LAC 33:IX.3103.D.

b. If bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site, either:

i. the cumulative loading rate for each pollutant shall not exceed the cumulative pollutant loading rate for the pollutant in Table 2 of LAC 33:IX.3103.D; or

ii. the concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of LAC 33:IX.3103.D.

c. If sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden, the concentration of each pollutant in the sewage sludge or the material derived from sewage sludge shall not exceed the ceiling concentrations in Table 1 of LAC 33:IX.3103.D and the pollutant concentrations for each pollutant listed in Table 3 of LAC 33:IX.3103.D, and the concentration of PCB must be less than 10 mg/kg of total solids (dry wt.).

d. If sewage sludge is sold or given away in a bag or other container for application to the land, either:

i. the concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of LAC 33:IX.3103.D; or

ii. the product of the concentration of each pollutant in the sewage sludge and the annual whole sludge application rate for the sewage sludge shall not cause the annual pollutant loading rate for the pollutant in Table 4 of LAC 33:IX.3103.D to be exceeded. The procedure used to determine the annual whole sludge application rate is presented in Appendix P of this Chapter.

2. Pollutant Concentrations and Loading Rates - Sewage Sludge

a. Ceiling Concentrations

Table 1 of LAC 33:IX.3103.D	
Ceiling Concentrations	
Pollutant	Ceiling Concentration (milligrams per kilogram) <sup>1</sup>
Arsenic	75
Cadmium	85
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500

<sup>1</sup>Dry weight basis

b. Cumulative Pollutant Loading Rates

Table 2 of LAC 33:IX.3103.D	
Cumulative Pollutant Loading Rates	
Pollutant	Cumulative Pollutant Loading Rate (kilograms per hectare)
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800

c. Pollutant Concentrations

Table 3 of LAC 33:IX.3103.D	
Pollutant Concentrations	
Pollutant	Monthly Average Concentration (milligrams per kilogram) <sup>1</sup>
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800

<sup>1</sup>Dry weight basis

d. Annual Pollutant Loading Rates

Table 4 of LAC 33:IX.3103.D	
Annual Pollutant Loading Rates	
Pollutant	Annual Pollutant Loading Rate (kilograms per hectare per 365-day period)
Arsenic	2.0
Cadmium	1.9
Copper	75
Lead	15
Mercury	0.85
Nickel	21
Selenium	5.0
Zinc	140

3. Domestic Septage. The annual application rate for domestic septage applied to agricultural land, forest, or a

reclamation site shall not exceed the annual application rate calculated using equation (1).

$$AAR = \frac{N}{0.0026} \quad \text{Equation (1)}$$

Where:

AAR= annual application rate in gallons per acre per 365-day period.

N = amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

E. Other Requirements and Other Management Practices for Bulk Sewage Sludge

1. Other Requirements

a. The person who prepares bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk sewage sludge written notification of the concentration, on a dry weight basis, of total nitrogen, ammonia (as N), nitrates, potassium, and phosphorus in the bulk sewage sludge.

b. When a person who prepares bulk sewage sludge provides the bulk sewage sludge to a person who applies the bulk sewage sludge to the land, the person who prepares the bulk sewage sludge shall provide the person who applies the bulk sewage sludge notice and necessary information to comply with the requirements in this Subchapter.

c. The person who applies bulk sewage sludge to the land shall provide the owner or leaseholder of the land on which the bulk sewage sludge is applied notice and necessary information to comply with the requirements in this Subchapter.

d. No person shall apply bulk sewage sludge subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D to the land without first contacting the state administrative authority to determine if bulk sewage sludge subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D has been applied to the land since July 20, 1993.

e. No person shall apply bulk sewage sludge subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D has been reached.

f. If bulk sewage sludge has not been applied to a site since July 20, 1993, the cumulative amount for each pollutant listed in Table 2 of LAC 33:IX.3103.D may be applied to the site in accordance with Subsection D.1.b.i of this Section.

g. If bulk sewage sludge has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk sewage sludge since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with Subsection D.1.b.i of this Section.

h. If bulk sewage sludge has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk sewage sludge since that date is not known, an additional amount of each

pollutant shall not be applied to the site in accordance with Subsection D.1.b.i of this Section.

2. Other Management Practices

a. Bulk sewage sludge shall not be applied to the land if it is likely to adversely affect a threatened or endangered species listed under section 4 of the Endangered Species Act or its designated critical habitat.

b. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a *wetland* or other *waters of the state*, as defined in LAC 33:IX.2313, except as provided in a permit issued in accordance with section 402 or 404 of the CWA or LAC 33:IX.Chapter 23.

c. Bulk sewage sludge shall not be applied to agricultural land, forest, or a reclamation site that is 33 feet (10 meters) or less from *waters of the state*, as defined in LAC 33:IX.2313, unless otherwise specified by the permitting authority.

F. Operational Standards Pathogens and Vector Attraction Reduction

1. Pathogens Sewage Sludge

a. The Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 or the Class B pathogen requirements and site restrictions in LAC 33:IX.3111.C.2 shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. The Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 shall be met when sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden.

c. The Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

2. Pathogens - Domestic Septage. The requirements in either LAC 33:IX.3111.C.3.a or b shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

3. Vector Attraction Reduction Sewage Sludge

a. One of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - j shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h shall be met when sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

4. Vector Attraction Reduction - Domestic Septage. The vector attraction reduction requirements in LAC 33:IX.3111.D.2.i, j, or k shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

G. Frequency of Monitoring

1. Sewage Sludge

a. The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3, and Table 4 of LAC 33:IX.3103.D; the frequency of monitoring for pathogen

density requirements in LAC 33:IX.3111.C.1 and 2.b; and the frequency of monitoring for vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - d and g - h shall be the frequency specified in Table 1 of LAC 33:IX.3103.G.

Table 1 of LAC 33:IX.3103.G	
Frequency of Monitoring - Land Application	
Amount of sewage sludge <sup>1</sup> (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year)
Equal to or greater than 15,000	Once per month (12 times per year)
<sup>1</sup> Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).	

b. After the sewage sludge has been monitored for two years at the frequency in Table 1 of LAC 33:IX.3103.G, the permitting authority may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in LAC 33:IX.3111.C.1.e.ii and iii.

2. Domestic Septage. If either the pathogen requirements in LAC 33:IX.3111.C.3.b or the vector attraction reduction requirements in LAC 33:IX.3111.D.2.k are met when domestic septage is applied to agricultural land, forest, or a reclamation site, the permittee shall monitor each container of domestic septage applied to the land for compliance with those requirements.

H. Recordkeeping

1. All Class I sludge management facilities, as defined in LAC 33:IX.2313, that prepare sewage sludge shall keep a record of the annual production of sewage sludge (i.e. dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

2. Sewage Sludge

a. The recordkeeping requirements for the person who prepares the sewage sludge or a material derived from sewage sludge that is land applied and meets the criteria in Subsection A.2.a or 3.a of this Section are those indicated in Subsection J.5.a of this Section.

b. For bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site and that meets the pollutant concentrations in Table 3 of LAC 33:IX.3103.D, the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1, and the vector attraction reduction requirements in either LAC 33:IX.3111.D.2.i or j:

i. the person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 3 of LAC 33:IX.3103.D;

(b). a description of how the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 are met; and

(c). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 was prepared under my direction and supervision in accordance with the

system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk sewage sludge to the land shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Subsection C.2.a.i - v of this Section and the other management practices in Subsection E.2 of this Section are met for each site on which bulk sewage sludge is applied;

(b). a description of how the vector attraction reduction requirements in either LAC 33:IX.3111.D.2.i or j are met for each site on which bulk sewage sludge is applied; and

(c). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i - v, the other management practices in LAC 33:IX.3103.E.2 and the vector attraction reduction requirement in [insert either LAC 33:IX.3111.D.2.i or j] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

c. For bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site and that meets the pollutant concentrations in Table 3 of LAC 33:IX.3103.D, the Class B pathogen requirements in LAC 33:IX.3111.C.2, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h for the person who prepares the bulk sewage sludge, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.i or j for the person who applies the bulk sewage sludge to the land:

i. the person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 3 of LAC 33:IX.3103.D;

(b). a description of how the Class B pathogen requirements in LAC 33:IX.3111.C.2 are met;

(c). a description of how one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h is met; and

(d). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the Class B pathogen requirements in LAC 33:IX.3111.C.2 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk sewage sludge to the land shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Subsection C.2.a.i - v of this Section and the other management practices in Subsection E.2 of this Section are met for each land site on which bulk sewage sludge is applied;

(b). a description of how the site restrictions in LAC 33:IX.3111.C.2.e are met for each land site on which bulk sewage sludge is applied;

(c). a description of how the vector attraction reduction requirement in either LAC 33:IX.3111.D.2.i or j is met;

(d). the date bulk sewage sludge is applied to each site; and

(e). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i - v, the other management practices in LAC 33:IX.3103.E.2, the site restrictions in LAC 33:IX.3111.C.2.e, and the vector attraction reduction requirement in [insert either LAC 33:IX.3111.D.2.i or j] was prepared for each site on which bulk sewage sludge is applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

d. For bulk sewage sludge applied to the land that is agricultural land, forest, a public contact site, or a reclamation site whose cumulative loading rate for each pollutant does not exceed the cumulative pollutant loading rate for each pollutant in Table 2 of LAC 33:IX.3103.D and that meets the Exceptional Quality or Class B pathogen requirements in LAC 33:IX.3111.C, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h for the person who prepares the bulk sewage sludge, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.i or j for the person who applies the bulk sewage sludge to the land:

i. the person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 1 of LAC 33:IX.3103.D in the bulk sewage sludge;

(b). a description of how the Exceptional Quality or Class B pathogen requirements in LAC 33:IX.3111.C are met;

(c). how one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h is met; and

(d). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in [insert either LAC 33:IX.3111.C.1 or 2] and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified

personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk sewage sludge to the land shall develop the following information, retain the information in Subsection H.2.d.ii.(a) - (g) of this Section indefinitely, and retain the information in Subsection H.2.d.ii.(h) - (m) of this Section for five years:

(a). the location, by either street address or latitude and longitude, of each land site on which bulk sewage sludge is applied;

(b). the number of hectares or acres in each site on which bulk sewage sludge is applied;

(c). the date bulk sewage sludge is applied to each land site;

(d). the cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of LAC 33:IX.3103.D in the bulk sewage sludge applied to each land site, including the amount in Subsection E.1.g of this Section;

(e). the amount of sewage sludge (i.e., tons or metric tons) applied to each land site;

(f). a description of how the information was obtained in order to comply with Subsection E.1 of this Section;

(g). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the requirements in LAC 33:IX.3103.E.1 was prepared for each land site on which bulk sewage sludge was applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(h). a description of how the general management practices in Subsection C.2.a.i - v of this Section and the other management practices in Subsection E.2 of this Section are met for each land site on which bulk sewage sludge is applied;

(i). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i - v and the other management practices in LAC 33:IX.3103.E.2 was prepared for each land site on which bulk sewage sludge was applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(j). a description of how the site restrictions in LAC 33:IX.3111.C.2.e are met for each land site on which Class B bulk sewage sludge is applied;

(k). the following certification statement when the bulk sewage sludge meets the Class B pathogen requirements in LAC 33:IX.3111.C.2: "I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in LAC 33:IX.3111.C.2.e for each land site on which Class B sewage

sludge was applied was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(l). if the vector attraction reduction requirements in either LAC 33:IX.3111.D.2.i or j are met, a description of how the requirements are met; and

(m). the following certification statement when the vector attraction reduction requirement in either LAC 33:IX.3111.D.2.i or j is met: "I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in [insert either LAC 33:IX.3111.D.2.i or j] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

e. for sewage sludge sold or given away in a bag or other container for application to the land meeting the requirement at Subsection D.1.d.ii of this Section, the Exceptional Quality pathogen requirements at LAC 33:IX.3111.C, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h:

i. the person who prepares the sewage sludge that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

(a). the annual whole sludge application rate for the sewage sludge that does not cause the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded;

(b). the concentration of each pollutant listed in Table 4 of LAC 33:IX.3103.D in the sewage sludge;

(c). a description of how the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 are met;

(d). a description of how one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h is met;

(e). a description of how the general management practice in Subsection C.2.b.ii of this Section was met; and

(f). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practice in LAC 33:IX.3103.C.2.b.ii, the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1, and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the sewage sludge that is given away or sold in a bag or other container to the land that is agricultural land, forest, a public contact site, or a

reclamation area shall develop the following information and shall retain the information for five years:

(a) a description of how the general management practices in Subsection C.2.a.i - v and b.i are met for each site on which the sewage sludge given away or sold in a bag or other container is applied; and

(b) the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices 33:IX.3103.C.2.a.i - v and b.i was prepared for each site on which sewage sludge given away or sold in a bag or other container is applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment."

3. Domestic Septage. The person who applies domestic septage to agricultural land, forest, or a reclamation site shall develop the following information and shall retain the information for five years:

a. the location, by either street address or latitude and longitude, of each site on which domestic septage is applied;

b. the number of acres in each site on which domestic septage is applied;

c. the date domestic septage is applied to each site;

d. the nitrogen requirement for the crop or vegetation grown on each site during a 365-day period;

e. the rate, in gallons per acre per 365-day period, at which domestic septage is applied to each site;

f. a description of how the pathogen requirements in either LAC 33:IX.3111.C.3.a or b are met;

g. a description of how the vector attraction reduction requirements in LAC 33:IX.3111.D.2.i, j, or k are met;

h. a description of how the general management practices at LAC 33:IX.3103.C.2.a.ii - vi are met; and

i. the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices at LAC 33:IX.3103.C.2.a.ii - vi, the pathogen requirements in [insert either LAC 33:IX.3111.C.3.a or b] and the vector attraction reduction requirements in [insert LAC 33:IX.3111.D.2.i, j, or k] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

#### I. Reporting

1. All Class I sludge management facilities, as defined in LAC 33:IX.2313, that prepare sewage sludge shall submit the information in Subsection H.1 of this Section to the state administrative authority on February 19 of each year.

#### 2. Additional Reporting Requirements

a. Reporting requirements for a person who prepares the sewage sludge or a material derived from sewage sludge having an Exceptional Quality Certification are as indicated in Subsection J.5.b of this Section.

b. All other Class I sludge management facilities, as defined in LAC 33:IX.2313, except the person in Subsection H.2.d.ii of this Section who applies bulk sewage sludge to the land and the person who applies domestic septage to the land, that are required to obtain a permit under LAC 33:IX.3101.C, shall submit the information in Subsection H.2 of this Section, except the information in Subsection H.2.d.ii of this Section, for the appropriate requirements, to the state administrative authority on February 19 of each year.

c. The person referred to in Subsection H.2.d.ii of this Section who applies bulk sewage sludge to the land and is required to obtain a permit under LAC 33:IX.3101.C shall submit the information in Subsection H.2.d.ii of this Section to the state administrative authority on February 19 of each year when 90 percent or more of any of the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D is reached at a land application site.

d. The person who applies domestic septage to the land shall submit the information referred to in Subsection H.3 of this Section for the appropriate requirements to the state administrative authority on February 19 of each year.

3. The state administrative authority may require any facility indicated in Subsection I.2.a of this Section to report any or all of the information required in Subsection I.2.b - d of this Section if deemed necessary for the protection of human health or the environment.

#### J. Exceptional Quality Certification

I.a. The person who prepares the sewage sludge or a material derived from sewage sludge who desires to receive an Exceptional Quality Certification must prepare sewage sludge that is Exceptional Quality as defined in LAC 33:IX.3101.H and shall forward to the state administrative authority an Exceptional Quality Certification Request Form having the following information:

i. the laboratory analysis of the metals in Table 3 of LAC 33:IX.3103.D;

ii. the laboratory analysis for pH, percent dry solids, percent ammonia nitrogen, percent nitrate-nitrite, percent total Kjeldahl nitrogen, percent organic nitrogen, percent phosphorus, percent potassium, and percent organic matter;

iii. the laboratory results for polychlorinated biphenyls (PCBs);

iv. the Exceptional Quality pathogen requirement in LAC 33:IX.3111.C.1 used and the results obtained;

v. the vector attraction reduction requirement in LAC 33:IX.3111.D.2.a - h used and the results obtained; and

vi. for sewage sludge or a material derived from sewage sludge that is sold or given away either in bulk or in a bag, an example of the label that will accompany the sewage sludge or material derived from sewage sludge. The label shall contain the following information:

(a) name and address of the preparer;

(b) concentration (by volume) of each metal in Table 3 of LAC 33:IX.3103.D;

(c) total nitrogen;

(d) percent ammonia (as N);

(e) percent phosphorus;

(f) pH; and

(g) concentration of PCBs in mg/kg of total solids (dry wt.).

b. Samples required to be collected in accordance with Subsection J.1.a.i – v of this Section shall be from at least four representative samplings of the sewage sludge or the material derived from sewage sludge taken at least 60 days apart within the 12 months prior to the date of the submittal of an Exceptional Quality Certification Request Form.

2. The state administrative authority shall determine whether the sewage sludge or the material derived from sewage sludge is of Exceptional Quality as defined in LAC 33:IX.3101.H, and shall determine whether to issue an Exceptional Quality Certification, within 30 days of having received a complete form having all of the information requested in Subsection J.1.a of this Section.

3. Any Exceptional Quality Certification shall have a term of not more than five years.

4.a. For the term of the Exceptional Quality Certification, the preparer of the sewage sludge or material derived from sewage sludge shall conduct continued sampling at the frequency of monitoring specified in Subsection G.1 of this Section. The samples shall be analyzed for the parameters specified in Subsection J.1.a.i-iii of this Section, and for the pathogen and vector attraction reduction requirements in Subsection J.1.a.iv and v, as required by LAC 33:IX.3111.

b. If results of the sampling indicate that the sewage sludge or the material derived from sewage sludge no longer is Exceptional Quality as defined in LAC 33:IX.3101.H, then the preparer must cease any land application of the sewage sludge as an Exceptional Quality sewage sludge.

c. If the sewage sludge that is no longer of Exceptional Quality is used or disposed, the exemption for Exceptional Quality sewage sludge no longer applies and the sewage sludge must meet all the requirements and restrictions of this Subchapter that apply to a sewage sludge that is not Exceptional Quality.

d. The sewage sludge or material derived from sewage sludge shall not be applied to the land as an Exceptional Quality sewage sludge until the sample analyses have shown that the sewage sludge or material derived from sewage sludge meets the criteria for Exceptional Quality as defined in LAC 33:IX.3101.H.

5.a. Recordkeeping. The person who prepares the sewage sludge or a material derived from sewage sludge shall develop the following information and shall retain the information for five years:

- i. the results of the sample analysis required in Subsection J.4.a of this Section; and
- ii. the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

b. Reporting. The person who prepares the sewage sludge or a material derived from sewage sludge shall forward the information required in Subsection J.5.a of this Section to the state administrative authority on a quarterly basis. The schedule for quarterly submission is contained in the following table.

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

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

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

**§3105. Reserved**

**§3107. Siting and Operation Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge**

**A. Siting**

**1. Location Characteristics**

a. Facilities shall not be located less than 200 feet from a property line. A reduction in this requirement shall be allowed only with the permission, in the form of a notarized affidavit, of the adjoining landowners and occupants. A copy of the notarized affidavit waiving the 200-foot buffer zone shall be entered in the mortgage and conveyance records of the parish for the adjoining landowner's property.

b. Facilities shall not be located less than 200 feet from a residence or place of business.

c. Facilities shall not be located less than 100 feet from a private or public potable water source.

d. Facilities shall not be located less than 25 feet from a subsurface drainage pipe or drainage ditch that discharges directly to waters of the state.

e. Composting operations should not be located on airports. However, when they are located on an airport, composting operations should not be located closer than the greater of the following distances: 1,200 feet from any aircraft movement area, loading ramp, or aircraft parking space; or the distance called for by airport design requirements.

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

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

h. Storage and processing of sewage sludge or any material derived from sewage sludge is prohibited within any of the buffer zones indicated in Subsection A.1.a - g of this Section.

i. Facilities located in, or within, 1,000 feet of swamps, marshes, wetlands, estuaries, wildlife-hatchery areas, habitat of endangered species, archaeological sites, historic sites, publicly owned recreation areas, and similar

critical environmental areas shall be isolated from such areas by effective barriers that eliminate probable adverse impacts from facility operations.

j. Facilities located in, or within, 1,000 feet of an aquifer recharge zone shall be designed to protect the areas from adverse impacts of operations at the facility.

k. Access to facilities by land or water transportation shall be by all-weather roads or waterways that can meet the demands of the facility and are designed to avoid, to the extent practicable, congestion, sharp turns, obstructions, or other hazards conducive to accidents; and the surface roadways shall be adequate to withstand the weight of transportation vehicles.

## 2. Facility Characteristics

### a. Perimeter Barriers, Security, and Signs

i. All facilities must have a perimeter barrier around the facility that prevents unauthorized ingress or egress, except by willful entry.

ii. During operating hours, each facility entry point shall be continuously monitored, manned, or locked.

iii. During non-operating hours, each facility entry point shall be locked.

iv. All facilities that receive wastes from off-site sources shall post readable signs that list the types of wastes that can be received at the facility.

b. Fire Protection and Medical Care. All facilities shall have access to required fire protection and medical care, or such services shall be provided internally.

c. Receiving and Monitoring Sewage Sludge, other Feedstock, or Supplements Used

i. Each processing facility shall be equipped with a device or method to determine quantity (by wet-weight tonnage), sources (whether the sewage sludge or other feedstock or supplements to be mixed with the sewage were generated in-state or out-of-state), and types of feedstock or supplements. The facility shall also be equipped with a device or method to control entry of sewage sludge, other feedstock, or supplements coming on-site and prevent entry of unrecorded or unauthorized deliverables (i.e., hazardous, industrial, unauthorized, or unpermitted solid waste).

ii. Each processing facility shall be equipped with a central control and recordkeeping system for tabulating the information required in Subsection A.2.c.i of this Section.

## 3. Facility Surface Hydrology

a. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the facility to adjoining areas during a 24-hour/25-year storm event. When rainfall records are not available, the design standard shall be 12 inches of rainfall below 31 degrees north latitude and 9 inches of rainfall above 31 degrees north latitude. If the 24-hour/25-year storm event level is lower, the design standard shall be required.

b. The topography of the facility shall provide for drainage to prevent standing water and shall allow for drainage away from the facility.

c. All storm water and wastewater from a facility must conform to applicable requirements of Subchapters A-W of this Chapter.

## 4. Facility Geology

a. Except as provided in Subsection A.4.b of this Section, facilities shall have natural stable soils of low permeability for the area occupied by the facility, including

vehicle parking and turnaround areas, that should provide a barrier to prevent any penetration of surface spills into groundwater aquifers underlying the area or to a sand or other water-bearing stratum that would provide a conduit to such aquifer.

b. A design for surfacing natural soils that do not meet the requirement in Subsection A.4.a of this Section shall be prepared under the supervision of a registered engineer, licensed in the state of Louisiana with expertise in geotechnical engineering and geohydrology. Written certification by the engineer that the surface satisfies the requirements of Subsection A.4.a of this Section shall be provided.

5. Facility Plans and Specifications: Facility plans and specifications represented and described in the permit application or permit modifications for all facilities must be prepared under the supervision of, and certified by, a registered engineer, licensed in the state of Louisiana.

## 6. Facility Administrative Procedures

a. Permit Modifications. Permit modifications shall be in accordance with the requirements of this Chapter.

b. Personnel. All facilities shall have the personnel necessary to achieve the operational requirements of the facility.

### B. Operations

#### 1. Composters, Mixers, Blenders, and Preparers

##### a. Facility Operations and Maintenance Manual

i. A Facility Operations and Maintenance Manual shall be developed and forwarded with the permit application to the state administrative authority.

ii. The Facility Operations and Maintenance Manual must describe, in specific detail, how the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge (if applicable) will be managed during all phases of processing operations.

At a minimum, the manual shall address the following:

- (a) site and project description;
- (b) regulatory interfaces;
- (c) process management plan;
- (d) pathogen treatment plan;
- (e) odor management plan;
- (f) worker health and safety management plan;
- (g) housekeeping and nuisance management

plan;

- (h) emergency preparedness plan;
- (i) security, community relations, and public access plan;
- (j) regulated chemicals (list and location of regulated chemicals kept on-site);
- (k) recordkeeping procedures;
- (l) feedstock, supplements, and process management;
- (m) product distribution records;
- (n) operator certification; and
- (o) administration of the operations and maintenance manual.

iii. The Facility Operations and Maintenance Manual shall be kept on-site and readily available to employees and, if requested, to the state administrative authority or his/her duly authorized representative.

##### b. Facility Operational Standards

i. The facility must include a receiving area, mixing area, curing area, compost storage area for composting operations, drying and screening areas, and truck wash area located on surfaces capable of preventing groundwater contamination (periodic inspections of the surface shall be made to ensure that the underlying soils and the surrounding land surface are not being contaminated).

ii. All containers shall provide containment of the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge and thereby control litter and other pollution of adjoining areas.

iii. Provisions shall be made for the daily cleanup of the facility, including equipment and waste-handling areas.

iv. Treatment facilities for washdown and contaminated water shall be provided or the wastewater contained, collected, and transported off-site to an approved wastewater treatment facility.

v. Leachate Management. Leachate produced in the composting process:

(a) must be collected and disposed off-site at a permitted facility; or

(b) must be collected, treated, and discharged on-site in accordance with Subchapters A-W of this Chapter; or

(c) may be reused in the composting process as a source of moisture.

vi. Sufficient equipment shall be provided and maintained at all facilities to meet their operational needs.

vii. Odor Management

(a). The production of odor shall be minimized.

(b). Processed air and other sources of odor shall be contained and, if necessary, treated in order to remove odor before discharging to the atmosphere.

viii. Other feedstock and supplements that are blended, composted, or mixed with sewage sludge shall be treated for the effective removal of sharps including, but not limited to, sewing needles, straight pins, hypodermic needles, telephone wires, and metal bracelets.

## 2. Composters Only

a. Any compost made from sewage sludge that cannot be used according to these regulations shall be reprocessed or disposed of in an approved solid waste facility.

b. Composted sewage sludge shall be used, sold, or disposed of at a permitted disposal facility within 36 months of completion of the composting process.

## 3. Facility Closure Requirements

a. Notification of Intent to Close a Facility. All permit holders shall notify the administrative authority in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

i. date of planned closure;

ii. changes, if any, requested in the approved closure plan; and

iii. closure schedule and estimated cost.

b. Closure Requirements

i. An insect and rodent inspection is required before closure. Extermination measures, if required, must be provided.

ii. All remaining sewage sludge or a material derived from sewage sludge, other feedstock, and supplements shall be removed to a permitted facility for disposal.

iii. The permit holder shall verify that the underlying soils have not been contaminated in the operation of the facility. If contamination exists, a remediation/removal program developed to meet the requirements of Subsection B.3.c of this Section must be provided to the administrative authority.

c. Remediation/Removal Program

i. Surface liquids and sewage sludges containing free liquids shall be dewatered or removed.

ii. If a clean closure is achieved, there are no further post-closure requirements. The plan for clean closure must reflect a method for determining that all waste has been removed, and such a plan shall, at a minimum, include the following:

(a). identification (analysis) of the sewage sludge, other feedstock, and supplements that have entered the facility;

(b). selection of the indicator parameters to be sampled that are intrinsic to the sewage sludge, other feedstock, and supplements that have entered the facility in order to establish clean-closure criteria. Justification of the parameters selected shall be provided in the closure plan;

(c). sampling and analyses of the uncontaminated soils in the general area of the facility for a determination of background levels using the indicator parameters selected. A diagram showing the location of the area proposed for the background sampling, along with a description of the sampling and testing methods, shall be provided;

(d). a discussion of the sampling and analyses of the "clean" soils for the selected parameters after the waste and contaminated soils have been excavated. Documentation regarding the sampling and testing methods (i.e., including a plan view of the facility, sampling locations, and sampling quality-assurance/quality-control programs) shall be provided;

(e). a discussion of a comparison of the sample(s) from the area of the excavated facility to the background sample. Concentrations of the selected parameter(s) of the bottom and side soil samples of the facility must be equal to or less than the background sample to meet clean closure criteria;

(f). analyses to be sent to the Office of Environmental Services, Permits Division confirming that the requirements of LAC 33:IX.3107.B.3.b have been satisfied;

(g). identification of the facility to be used for the disposal of the excavated waste; and

(h). a statement from the permit holder indicating that, after the closure requirements have been met, the permit holder will file a request for a closure inspection with the Office of Environmental Services, Permits Division before backfilling takes place. The administrative authority will determine whether the facility has been closed properly.

iii. If sewage sludge or a material derived from sewage sludge or other feedstock and supplements used in the blending, composting, or mixing process remains at the facility, the closure and post-closure requirements for

industrial (Type I) solid waste landfills or non-industrial landfills (Type II), as provided in LAC 33:VII, shall apply.

iv. If the permit holder demonstrates that removal of most of the sewage sludge or a material derived from sewage sludge or other feedstock and supplements to achieve an alternate level of contaminants based on indicator parameters in the contaminated soil will be adequately protective of human health and the environment (including groundwater) in accordance with LAC 33:I.Chapter 13, the administrative authority may decrease or eliminate the post-closure requirements.

(a). If levels of contamination at the time of closure meet residential standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Subsection B.3.c.iv of this Section shall not apply.

(b). Excepting those sites closed in accordance with Subsection B.3.c.iv.(a) of this Section, within 90 days after a closure is completed, the permit holder must have entered in the mortgage and conveyance records of the parish in which the property is located, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.

v. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder.

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

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

### **§3109. Financial Assurance Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge**

A. Financial Responsibility During Operation. Permit holders or applicants for standard permits have the following financial responsibilities while the facility is in operation.

1. Permit holders and applicants must maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of \$1 million per occurrence and \$1 million annual aggregate, per site, exclusive of legal-defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Evidence of this coverage shall be updated annually and provided to the Office of Management and Finance, Financial Services Division.

2. The financial responsibility may be established by any one or a combination of the following:

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

i. a statement of coverage relative to environmental risks;

ii. a statement of all exclusions to the policy; and

iii. a certification by the insurer that the insurance afforded with respect to such sudden accidental occurrences is subject to all of the terms and conditions of the policy, provided, however, that any provisions of the policy inconsistent with the following Subclauses (a) – (f) are amended to conform with said subclauses:

(a). bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy;

(b). the insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Subsection A.3, 4, or 5 of this Section;

(c). whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements;

(d). cancellation of the policy, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the Office of Management and Finance, Financial Services Division;

(e). any other termination of the policy will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the Office of Management and Finance, Financial Services Division; and

(f). the insurer is admitted, authorized, or eligible to conduct insurance business in Louisiana.

b. The wording of the liability endorsement shall be identical to the wording in Document 1 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

c. The wording of the certificate of insurance shall be identical to the wording in Document 2 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

3. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the following requirements, and by submitting the letter to the administrative authority.

a. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund agreement shall be as specified in Subsection B.3.i of this Section.

c. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, name of issuing institution, and date, and providing the following information:

i. agency interest number;

ii. site name;

iii. facility name;

iv. facility permit number; and

v. the amount of funds assured for liability coverage of the facility by the letter of credit.

d. The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the Office of Management and Finance, Financial Services Division receive the notice, as evidenced by the return receipts.

e. The wording of the letter of credit shall be identical to the wording in Document 3 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

#### 4. Financial Test

a. To meet this test, the applicant, permit holder, or parent corporation of the applicant (corporate guarantor) or permit holder must submit to the Office of Management and Finance, Financial Services Division the documents required by Subsection B of this Section demonstrating that the requirements of Subsection B of this Section have been met. Use of the financial test may be disallowed on the basis of the accessibility of the assets of the permit holder, applicant, or parent corporation (corporate guarantor). If the applicant, permit holder, or parent corporation is using the financial test to demonstrate liability coverage and closure and post-closure care, only one letter from the chief financial officer is required.

b. The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as authorized in Subsection A.5 of this Section.

c. The wording of the financial test shall be as specified in Subsection B.8.d of this Section.

#### 5. Corporate Guarantee

a. A permit holder or applicant may meet the requirements of Subsection A.1 of this Section for liability coverage by obtaining a written guarantee, hereafter referred to as a "corporate guarantee." The guarantor must demonstrate to the administrative authority that the guarantor meets the requirements in this Subsection and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subsection B.8.b and d of this Section. The terms of the corporate guarantee must be in an authentic act signed and sworn to by an authorized officer of the corporation before a notary public and must provide that:

i. the guarantor meets or exceeds the financial-test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subsection B.8 of this Section;

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

iii. if the permit holder or applicant fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences (or both as the case may be), arising from the operation of facilities covered by the corporate guarantee, or fails to pay an amount agreed to in settlement of the claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage;

iv. the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial-test criteria, the guarantor shall send within 90 days, by certified mail, notice to the Office of Management and Finance, Financial Services Division, and to the permit holder or applicant, that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of said fiscal year the guarantor shall establish such financial assurance, unless the permit holder or applicant has done so;

v. the guarantor agrees to notify the Office of Management and Finance, Financial Services Division by certified mail of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

vi. the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial-test criteria or that he or she is disallowed from continuing as a guarantor of closure or post-closure care, he or she shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant unless the permit holder or applicant has done so;

vii. the guarantor agrees to remain bound under the guarantee notwithstanding any or all of the following: amendment or modification of the permit, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;

viii. the guarantor agrees to remain bound under the guarantee for as long as the permit holder or applicant must comply with the applicable financial assurance requirements of Subsection B of this Section for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the administrative authority and the permit holder or applicant. Such cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder, as evidenced by the return receipts;

ix. the guarantor agrees that if the permit holder or applicant fails to provide alternate financial assurance, as specified in this Subsection, and obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the permit holder or applicant;

x. the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder or applicant. Guarantor also

expressly waives notice of amendments or modifications of the facility permit(s);

xi. the wording of the corporate guarantee shall be as specified in Subsection B.8.i of this Section.

b. A corporate guarantee may be used to satisfy the requirements of this Section only if the attorney general(s) or insurance commissioner(s) of the state in which the guarantor is incorporated, and the state in which the facility covered by the guarantee is located, has submitted a written statement to the Office of Management and Finance, Financial Services Division that a corporate guarantee is a legally valid and enforceable obligation in that state.

6. The use of a particular financial responsibility mechanism is subject to the approval of the administrative authority.

7. Permit holders of existing facilities must submit, on or before February 20, 1995, financial responsibility documentation that complies with the requirements of this Subsection. Applicants for permits for new facilities must submit evidence of financial assurance in accordance with this Section at least 60 days before the date on which sewage sludge, other feedstock, or supplements are first received for processing.

#### B. Financial Responsibility for Closure and Post-Closure Care

1. Permit holders or applicants have the following financial responsibilities for closure and post-closure care.

a. Permit holders or applicants shall establish and maintain financial assurance for closure and post-closure care.

b. The applicant or permit holder shall submit to the Office of Management and Finance, Financial Services Division the estimated closure date and the estimated cost of closure and post-closure care in accordance with the following procedures:

i. The applicant or permit holder must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these rules. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.

ii. The applicant or permit holder of a facility subject to post-closure monitoring or maintenance requirements must have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the provisions of these rules. The estimate of post-closure costs is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required and shall be based on the cost of hiring a third party to conduct post-closure activities in accordance with the closure plan.

iii. The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business* or a reestimation of the closure and post-closure costs in

accordance with Subsection B.1.b.i - ii of this Section. The permit holder or applicant must revise the cost estimate whenever a change in the closure/post-closure plans increases or decreases the cost of the closure plan. The permit holder or applicant must submit a written notice of any such adjustment to the Office of Management and Finance, Financial Services Division within 15 days following such adjustment.

iv. For trust funds, the first payment must be at least equal to the current closure and post-closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each annual anniversary of the date of the first payment. The amount of each subsequent payment must be determined by subtracting the current value of the trust fund from the current closure and post-closure cost estimates and dividing the result by the number of years remaining in the pay-in period. The initial pay-in period is based on the estimated life of the facility.

2. Financial Assurance Mechanisms. The financial assurance mechanism must be one or a combination of the following: a trust fund, a financial guarantee bond ensuring closure funding, a performance bond, a letter of credit, an insurance policy, or the financial test. The financial assurance mechanism is subject to the approval of the administrative authority and must fulfill the following criteria:

a. Except when a financial test, trust fund, or certificate of insurance is used as the financial assurance mechanism, a standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the financial assurance mechanism into which the proceeds of such mechanism could be transferred should such funds be necessary for either closure or post-closure of the facility, and a signed copy must be furnished to the administrative authority with the mechanism.

b. A permit holder or applicant may use a financial assurance mechanism specified in this Section for more than one facility, if all such facilities are located within Louisiana and are specifically identified in the mechanism.

c. The amount covered by the financial assurance mechanism(s) must equal the total of the current closure and post-closure estimates for each facility covered.

d. When all closure and post-closure requirements have been satisfactorily completed, the administrative authority shall execute an approval to terminate the financial assurance mechanism(s).

3. Trust Funds. A permit holder or applicant may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally signed duplicate of the trust agreement to the Office of Management and Finance, Financial Services Division.

a. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

b. Trusts must be accomplished in accordance with and subject to the laws of Louisiana. The beneficiary of the trust shall be the administrative authority.

c. Trust-fund earnings may be used to offset required payments into the fund, to pay the fund trustee, or to pay other expenses of the funds, or may be reclaimed by

the permit holder or applicant upon approval of the administrative authority.

d. The trust agreement must be accompanied by an affidavit certifying the authority of the individual signing the trust on behalf of the permit holder or applicant.

e. The permit holder or applicant may accelerate payments into the trust fund or deposit the full amount of the current closure cost estimate at the time the fund is established. The permit holder or applicant must, however, maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Subsection B.1.b.iv of this Section.

f. If the permit holder or applicant establishes a trust fund after having used one or more of the alternate mechanisms specified in this Section, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Paragraph.

g. After the pay-in period is completed, whenever the current cost estimate changes, the permit holder must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the permit holder or applicant, within 60 days after the change in the cost estimate, must either deposit an amount into the fund that will make its value at least equal to the amount of the closure/post-closure cost estimate or it must estimate or obtain other financial assurance as specified in this Section to cover the difference.

h. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and/or post-closure may request reimbursement for closure and/or post-closure expenditures by submitting itemized bills to the Office of Management and Finance, Financial Services Division. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure and/or post-closure expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure and/or post-closure will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the permit holder is no longer required to maintain financial assurance.

i. The wording of the trust agreement shall be identical to the wording in Document 4 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in Document 4 of Appendix R of this Chapter.

4. Surety Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Management and Finance, Financial Services Division.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on

federal bonds in Circular 570 of the U.S. Department of the Treasury and approved by the administrative authority.

b. The permit holder or applicant who uses a surety bond to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subsection B.3.i of this Section.

c. The bond must guarantee that the operator will:

i. fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

ii. fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure or post-closure is issued; or

iii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after receipt by both the permit holder and the administrative authority of a notice of cancellation of the bond from the surety.

d. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond.

e. The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.

f. Whenever the current cost-estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure estimate and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the administrative authority.

g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the administrative authority. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts.

h. The wording of the surety bond guaranteeing payment into a standby trust fund shall be identical to the wording in Document 5 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

5. Performance Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Management and Finance, Financial Services Division.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and approved by the administrative authority.

b. The permit holder or applicant who uses a surety bond to satisfy the requirements of this Section must also provide to the administrative authority evidence of establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subsection B.3.i of this Section.

c. The bond must guarantee that the permit holder or applicant will:

i. perform final closure and post-closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

ii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after the date both the permit holder and the administrative authority receive notice of cancellation of the bond from the surety.

d. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond. Following a determination by the administrative authority that the permit holder has failed to perform final closure and post-closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure and post-closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

e. The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.

f. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate after written approval of the administrative authority.

g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the Office of Management and Finance, Financial Services Division. Cancellation may not occur before 120 days have elapsed beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts.

h. The wording of the performance bond shall be identical to the wording in Document 6 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

6. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the Office of Management and Finance, Financial Services Division.

a. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund shall be as specified in Subsection B.3.i of this Section.

c. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, issuing institution, and date, and providing the following information:

i. agency interest number;

ii. site name;

iii. facility name;

iv. facility permit number; and

v. the amount of funds assured for closure and/or post closure of the facility by the letter of credit.

d. The letter of credit must be irrevocable and issued for a period of at least one year, unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and Office of Management and Finance, Financial Services Division by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority receive the notice, as evidenced by the return receipts.

e. The letter of credit must be issued in an amount at least equal to the current closure and post-closure cost estimates.

f. Whenever the current cost estimates increase to an amount greater than the amount of the credit, the permit holder, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure and post-closure cost estimates upon written approval of the administrative authority.

g. Following a determination by the administrative authority that the permit holder has failed to perform final closure or post-closure in accordance with the closure plan and other permit requirements when required to do so, the administrative authority may draw on the letter of credit.

h. The wording of the letter of credit shall be identical to the wording in Document 7 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

7. Insurance. A permit holder or applicant may satisfy the requirements of this Section by obtaining insurance that conforms to the following requirements and submitting a

certificate of such insurance to the Office of Management and Finance, Financial Services Division.

a. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess- or surplus-lines insurer in one or more states, and authorized to transact insurance business in Louisiana.

b. The insurance policy must be issued for a face amount at least equal to the current closure and post-closure cost estimates.

c. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

d. The insurance policy must guarantee that funds will be available to close the facility and provide post-closure care once final closure occurs. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the administrative authority, to such party or parties as the administrative authority specifies.

e. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and post-closure may request reimbursement for closure or post-closure expenditures by submitting itemized bills to the Office of Management and Finance, Financial Services Division. Within 60 days after receiving such bills, the administrative authority will determine whether the expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the insurer to make reimbursement in such amounts as the administrative authority specifies in writing.

f. The permit holder must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the permit holder.

g. Each policy must contain a provision allowing assignment of the policy to a successor permit holder. Such assignment may be conditional upon consent of the insurer, provided consent is not unreasonably refused.

h. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the permit holder and the Office of Management and Finance, Financial Services Division. Cancellation, termination, or failure to renew may not occur, however, before 120 days have elapsed, beginning on the date that both the administrative authority and the permit holder receive notice of cancellation, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration:

- i. the administrative authority deems the facility abandoned;
- ii. the permit is terminated or revoked or a new permit is denied;
- iii. closure and/or post-closure is ordered;

iv. the permit holder is named as debtor in a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code; or

v. the premium due is paid.

i. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the permit holder, within 60 days after the increase, must either increase the face amount to at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current closure and post-closure cost estimates following written approval by the administrative authority.

j. The wording of the certificate of insurance shall be identical to the wording in Document 8 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

8. Financial Test. A permit holder, applicant, or parent corporation of the permit holder or applicant, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that he or she passes a financial test as specified in this Paragraph. The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as outlined in Subsection A.5 of this Section.

a. To pass this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must meet either of the following criteria:

i. the permit holder, applicant, or parent corporation of the permit holder or applicant must have:

(a). tangible net worth of at least six times the sum of the current closure and post-closure estimates to be demonstrated by this test and the amount of liability coverage to be demonstrated by this test;

(b). tangible net worth of at least \$10 million; and

(c). assets in the United States amounting to either at least 90 percent of his total assets, or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test; or

ii. the permit holder, applicant, or parent corporation of the permit holder or applicant must have:

(a). a current rating for his most recent bond issuance of AAA, AA, A, or BBB, as issued by *Standard and Poor's*, or Aaa, Aa, or Baa, as issued by *Moody's*;

(b). tangible net worth of at least \$10 million; and

(c). assets in the United States amounting to either 90 percent of his total assets or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test.

b. To demonstrate that he or she meets this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must submit the following three items to

the Office of Management and Finance, Financial Services Division:

i. a letter signed by the chief financial officer of the permit holder, applicant, or parent corporation demonstrating and certifying the criteria in Subsection B.8.a of this Section and including the information required by Subsection B.8.d of this Section. If the financial test is provided to demonstrate both assurance for closure and/or post-closure care and liability coverage, a single letter to cover both forms of financial responsibility is required;

ii. a copy of the independent certified public accountant (CPA)'s report on the financial statements of the permit holder, applicant, or parent corporation of the permit holder or applicant for the latest completed fiscal year; and

iii. a special report from the independent CPA to the permit holder, applicant, or parent corporation of the permit holder or applicant stating that:

(a). the CPA has computed the data specified by the chief financial officer as having been derived from the independently audited, year-end financial statements with the amounts for the latest fiscal year in such financial statements; and

(b). in connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.

c. The administrative authority may disallow use of this test on the basis of the opinion expressed by the independent CPA in his report on qualifications based on the financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. The administrative authority may disallow the use of this test on the basis of the accessibility of the assets of the parent corporation (corporate guarantor), permit holder, or applicant. The permit holder, applicant, or parent corporation must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.

d. The permit holder, applicant, or parent corporation (if a corporate guarantor) of the permit holder or applicant shall provide to the Office of Management and Finance, Financial Services Division a letter from the chief financial officer, the wording of which shall be identical to the wording in Document 9 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The letter shall certify the following information:

i. a list of commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant of the facility, for which financial assurance for liability coverage is demonstrated through the use of financial tests, including the amount of liability coverage;

ii. a list of commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant, for which financial assurance for the closure or post-closure care is demonstrated through the use of a financial test or self-insurance by the permit holder or applicant, including the cost estimates for the closure and post-closure care of each facility;

iii. a list of the commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, owned or operated by any subsidiaries of the parent corporation for which financial assurance for closure and/or post-closure is demonstrated through the financial test or through use of self-insurance, including the current cost estimate for the closure or post-closure care for each facility and the amount of annual aggregate liability coverage for each facility; and

iv. a list of commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for closure or post-closure care is not demonstrated through the financial test, self-insurance, or other substantially equivalent state mechanisms, including the estimated cost of closure and post-closure of such facilities.

e. For the purposes of this Subsection the phrase "tangible net worth" shall mean the tangible assets that remain after liabilities have been deducted; such assets would not include intangibles such as good will and rights to patents or royalties.

f. The phrase "current closure and post-closure cost estimates," as used in Subsection B.8.a of this Section, includes the cost estimates required to be shown in Subsection B.8.a.i.(a) of this Section.

g. After initial submission of the items specified in Subsection B.8.b of this Section, the permit holder, applicant, or parent corporation of the permit holder or applicant must send updated information to the Office of Management and Finance, Financial Services Division within 90 days after the close of each succeeding fiscal year. This information must include all three items specified in Subsection B.8.b of this Section.

h. The administrative authority may, on the basis of a reasonable belief that the permit holder, applicant, or parent corporation of the permit holder or applicant may no longer meet the requirements of Subsection B.8 of this Section, require reports of financial condition at any time in addition to those specified in Subsection B.8.b of this Section. If the administrative authority finds, on the basis of such reports or other information, that the permit holder, applicant, or parent corporation of the permit holder or applicant no longer meets the requirements of Subsection B.8.b of this Section, the permit holder or applicant, or parent corporation of the permit holder or applicant must provide alternate financial assurance as specified in this Subsection within 30 days after notification of such a finding.

i. A permit holder or applicant may meet the requirements of Subsection B.8 of this Section for closure and/or post-closure by obtaining a written guarantee, hereafter referred to as a "corporate guarantee." The guarantor must be the parent corporation of the permit holder or applicant. The guarantor must meet the requirements and submit all information required for permit holders or applicants in Subsection B.8.a – h of this Section and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subsection B.8.b and d of this Section. The wording of the corporate guarantee must be identical to the wording in Document 10 of Appendix R of this Chapter, except that instructions in

brackets are to be replaced with the relevant information and the brackets deleted. The terms of the corporate guarantee must be in an authentic act signed and sworn by an authorized officer of the corporation before a notary public and must provide that:

i. the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subsection B.8 of this Section;

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

iii. "closure plans," as used in the guarantee, refers to the plans maintained as required by the Louisiana commercial blender, composter, or mixer of sewage sludge rules and regulations for the closure and post-closure care of facilities, as identified in the guarantee;

iv. for value received from the permit holder or applicant, the guarantor guarantees to the Louisiana Department of Environmental Quality that the permit holder or applicant will perform closure, post-closure care, or closure and post-closure care of the facility or facilities listed in the guarantee, in accordance with the closure plan and other permit or regulatory requirements whenever required to do so. In the event that the permit holder or applicant fails to perform as specified in the closure plan, the guarantor shall do so or establish a trust fund as specified in Subsection B.3 of this Section, in the name of the permit holder or applicant, in the amount of the current closure or post-closure cost estimates or as specified in Subsection B.1.b of this Section;

v. guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days after the end of the fiscal year, by certified mail, notice to the Office of Management and Finance, Financial Services Division and to the permit holder or applicant that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the permit holder or applicant has done so;

vi. the guarantor agrees to notify the Office of Management and Finance, Financial Services Division by certified mail of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

vii. the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant, unless the permit holder or applicant has done so;

viii. the guarantor agrees to remain bound under the guarantee, notwithstanding any or all of the following: amendment or modification of the closure plan, amendment

or modification of the permit, extension or reduction of the time of performance of closure or post closure, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;

ix. the guarantor agrees to remain bound under the guarantee for as long as the permit holder must comply with the applicable financial assurance requirements of this Subsection for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the Office of Management and Finance, Financial Services Division and the permit holder or applicant. The cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder or applicant, as evidenced by the return receipts;

x. the guarantor agrees that if the permit holder or applicant fails to provide alternative financial assurance as specified in this Subsection, and to obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the owner or operator; and

xi. the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit(s).

9. Local Government Financial Test. An owner or operator that satisfies the requirements of Subsection B.9.a – c of this Section may demonstrate financial assurance up to the amount specified in Subsection B.9.d of this Section.

a. Financial Component

i. The owner or operator must satisfy the following conditions, as applicable:

(a). if the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's*, on all such general obligation bonds; or

(b). the owner or operator must satisfy the ratio of cash plus marketable securities to total expenditures being greater than or equal to 0.05 and the ratio of annual debt service to total expenditures less than or equal to 0.20 based on the owner or operator's most recent audited annual financial statement.

ii. The owner or operator must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have his financial statements audited by an independent certified public accountant (or appropriate state agency).

iii. A local government is not eligible to assure its obligations under Subsection B.9 of this Section if it:

(a). is currently in default on any outstanding general obligation bonds;

(b). has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*;

(c). operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

(d). receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement as required under Subsection B.9.a.ii of this Section. The administrative authority may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the administrative authority deems the qualification insufficient to warrant disallowance of use of the test.

iv. The following terms used in this Subsection are defined as follows:

(a). *Deficit*—total annual revenues minus total annual expenditures.

(b). *Total Revenues*—revenues from all taxes and fees, but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party.

(c). *Total Expenditures*—all expenditures, excluding capital outlays and debt repayment.

(d). *Cash Plus Marketable Securities*—all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(e). *Debt Service*—the amount of principal and interest due on a loan in a given time period, typically the current year.

b. Public Notice Component. The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. For closure and post-closure costs, conformance with *Government Accounting Standards Board Statement 18* assures compliance with this public notice component.

c. Recordkeeping and Reporting Requirements

i. The local government owner or operator must place the following items in the facility's operating record:

(a). a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in Subsection B.9.d of this Section. It must provide evidence that the local government meets the conditions of Subsection B.9.a.i – iii of this Section, and certify that the local government meets the conditions of Subsection B.9.a.i – iii, b, and d of this Section;

(b). the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years and unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an

independent certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(c). a report to the local government from the local government's independent certified public accountant or the appropriate state agency based on performing an agreed upon procedures engagement relative to the financial ratios required by Subsection B.9.a.i.(b) of this Section, if applicable, and the requirements of Subsection B.9.a.ii and iii.(c) - (d) of this Section. The certified public accountant or state agency's report should state the procedures performed and the certified public accountant or state agency's findings; and

(d). a copy of the comprehensive annual financial report (CAFR) used to comply with Subsection B.9.b of this Section (certification that the requirements of *General Accounting Standards Board Statement 18* have been met).

ii. The items required in Subsection B.9.c.i of this Section must be placed in the facility operating record, in the case of closure and post-closure care, either before the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later.

iii. After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

iv. The local government owner or operator is no longer required to meet the requirements of Subsection B.9.c of this Section when:

(a). the owner or operator substitutes alternate financial assurance, as specified in this Section; or

(b). the owner or operator is released from the requirements of this Section in accordance with Subsection A or B of this Section.

v. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the Office of Management and Finance, Financial Services Division that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

vi. The administrative authority, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the administrative authority finds, on the basis of such reports or other information, that the owner or operator no longer meets the local government financial test, the local government must provide alternate financial assurance in accordance with this Section.

d. Calculation of Costs to be Assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under Subsection B.9 of this Section is determined as follows:

i. if the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue; or

ii. if the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR part 280, PCB storage facilities under 40 CFR part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265, or corresponding state programs, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under Subsection B.9 of this Section. The total that may be assured must not exceed 43 percent of the local government's total annual revenue; and

iii. the owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in Subsection B.9.d.i - ii of this Section.

10. Local Government Guarantee. An owner or operator may demonstrate financial assurance for closure and post-closure, as required by Subsections A and B of this Section, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in Subsection B.9 of this Section, and must comply with the terms of a written guarantee.

a. Terms of the Written Guarantee. The guarantee must be effective before the initial receipt of sewage sludge, other feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure and post-closure care. The guarantee must provide that:

i. if the owner or operator fails to perform closure and post-closure care, of a facility covered by the guarantee, the guarantor will:

(a). perform, or pay a third party to perform, closure and post-closure care as required; or

(b). establish a fully funded trust fund as specified in Subsection B.3 of this Section in the name of the owner or operator;

ii. the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Office of Management and Finance, Financial Services Division. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts; and

iii. if a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Office of Management and Finance, Financial Services Division. If the owner or operator fails to provide alternate financial assurance within the 90-day period, then the owner or operator must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating

record, and notify the Office of Management and Finance, Financial Services Division.

b. Recordkeeping and Reporting

i. The owner or operator must place a certified copy of the guarantee, along with the items required under Subsection B.9.c of this Section, into the facility's operating record before the initial receipt of sewage sludge, other feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure or post-closure care.

ii. The owner or operator is no longer required to maintain the items specified in Subsection B.10.b.i of this Section when:

(a). the owner or operator substitutes alternate financial assurance as specified in this Section; or

(b). the owner or operator is released from the requirements of this Section in accordance with Subsections A and B of this Section.

iii. If a local government guarantor no longer meets the requirements of Subsection B.9 of this Section, the owner or operator must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the Office of Management and Finance, Financial Services Division. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

11. Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Subsections A and B of this Section, by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in Subsection B.3 - 8 of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

12. Discounting. The administrative authority may allow discounting of closure and post-closure cost estimates in this Subsection up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

a. the administrative authority determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer to the Office of Management and Finance, Financial Services Division so stating;

b. the state finds the facility in compliance with applicable and appropriate permit conditions;

c. the administrative authority determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

d. discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

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

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

### §3111. Pathogens and Vector Attraction Reduction

A. Scope. This Section contains the following:

1. the requirements for a sewage sludge to be classified either Exceptional Quality or Class B with respect to pathogens;
2. the site restrictions for land on which a Class B sewage sludge is applied;
3. the pathogen requirements for domestic septage applied to agricultural land, forest, or a reclamation site; and
4. alternative vector attraction reduction requirements for sewage sludge that is applied to the land.

B. Special Definitions. In addition to the terms referenced and defined at LAC 33:IX.3101.H, the following definitions apply to this Section:

*Aerobic Digestion*—the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

*Anaerobic Digestion*—the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

*Density of Microorganisms*—the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

*Land With a High Potential for Public Exposure*—land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g. a construction site located in a city).

*Land With a Low Potential for Public Exposure*—land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

*Pathogenic Organisms*—disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

*pH*—the logarithm of the reciprocal of the hydrogen ion concentration measured at 25°C or measured at another temperature and then converted to an equivalent value at 25°C.

*Specific Oxygen Uptake Rate (SOUR)*—the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

*Total Solids*—the materials in sewage sludge that remain as residue when the sewage sludge is dried to a constant weight at 103° to 105°C.

*Unstabilized Solids*—organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

*Vector Attraction*—the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

*Volatile Solids*—the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550° C in the presence of excess air.

C. Pathogens

1. Sewage Sludge CAlternative Quality

a. The requirement in Subsection C.1.b of this Section and the requirements in either Subsection C.1.c, d, e, f, g, or h of this Section shall be met for a sewage sludge to be classified Exceptional Quality with respect to pathogens.

b. The Exceptional Quality pathogen requirements in Subsection C.1.c - h of this Section shall be met either

prior to meeting or at the same time the vector attraction reduction requirements in Subsection D of this Section, except the vector attraction reduction requirements in Subsection D.2.f - h of this Section, are met.

c. Exceptional Quality CAlternative 1

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

ii. The temperature of the sewage sludge that is used or disposed shall be maintained at a specific value for a period of time.

(a). When the percent solids of the sewage sludge is 7 percent or higher, the temperature of the sewage sludge shall be 50°C or higher, the time period shall be 20 minutes or longer, and the temperature and time period shall be determined using equation (2), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

$$D = \frac{131,700,000}{10^{0.1400t}} \quad \text{Equation (2)}$$

Where:

D = time in days.

t = temperature in degrees Celsius.

(b). When the percent solids of the sewage sludge is 7 percent or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50°C or higher, the time period shall be 15 seconds or longer, and the temperature and time period shall be determined using equation (2).

(c). When the percent solids of the sewage sludge is less than 7 percent and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation (2).

(d). When the percent solids of the sewage sludge is less than 7 percent, the temperature of the sewage sludge is 50°C or higher, and the time period is 30 minutes or longer, the temperature and time period shall be determined using equation (3).

$$D = \frac{50,070,000}{10^{0.1400t}} \quad \text{Equation (3)}$$

Where:

D = time in days.

t = temperature in degrees Celsius.

d. Exceptional Quality CAlternative 2

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable

Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

ii.(a). The pH of the sewage sludge that is used or disposed shall be raised to above 12 and shall remain above 12 for 72 hours.

(b). The temperature of the sewage sludge shall be above 52° C for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(c). At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50 percent.

e. Exceptional Quality Alternative 3

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

ii.(a). The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(b). When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Exceptional Quality with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(c). When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Exceptional Quality with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(d). After the enteric virus reduction in Subsection C.1.e.ii.(c) of this Section is demonstrated for the pathogen treatment process, the sewage sludge continues to be Exceptional Quality with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in Subsection C.1.e.ii.(c) of this Section.

iii.(a). The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(b). When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is Exceptional Quality with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(c). When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is Exceptional Quality with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(d). After the viable helminth ova reduction in Subsection C.1.e.iii.(c) of this Section is demonstrated for the pathogen treatment process, the sewage sludge continues to be Exceptional Quality with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in Subsection C.1.e.iii.(c) of this Section.

f. Exceptional Quality Alternative 4

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

ii. The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in LAC 33:IX.3103.A.2.a and 3.a, unless otherwise specified by the permitting authority.

iii. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

g. Exceptional Quality Alternative 5

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

ii. Sewage sludge that is used or disposed shall be treated in one of the Processes to Further Reduce Pathogens described in Appendix Q of this Chapter.

h. Exceptional Quality Alternative 6

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

ii. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a Process to Further Reduce Pathogens, as determined by the permitting authority.

2. Sewage Sludge Class B

a.i. The requirements in either of Subsection C.2.b, c, or d of this Section shall be met for a sewage sludge to be classified Class B with respect to pathogens.

ii. The site restrictions in Subsection C.2.e of this Section shall be met when sewage sludge that meets the Class B pathogen requirements in Subsection C.2.b, c, or d of this Section is applied to the land.

b. Class B Alternative 1

i. Seven representative samples of the sewage sludge that is used or disposed shall be collected.

ii. The geometric mean of the density of fecal coliform in the samples required by Subsection C.2.b.i of this Section shall be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

c. Class B Alternative 2. Sewage sludge that is used or disposed shall be treated in one of the Processes to Significantly Reduce Pathogens described in Appendix Q of this Chapter.

d. Class B Alternative 3. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a Process to Significantly Reduce Pathogens, as determined by the permitting authority.

e. Site Restrictions

i. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land

surface shall not be harvested for 14 months after application of sewage sludge.

ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four months or longer prior to incorporation into the soil.

iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than four months prior to incorporation into the soil.

iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.

v. Animals shall not be grazed on the land for 30 days after application of sewage sludge.

vi. Turf grown on land where sewage sludge is applied shall not be harvested for one year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the permitting authority.

vii. Public access to land with a high potential for public exposure shall be restricted for one year after application of sewage sludge, by means approved by the administrative authority.

viii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge, by means approved by the administrative authority.

3. Domestic Septage. For domestic septage applied to agricultural land, forest, or a reclamation site:

a. the site restrictions in Subsection C.2.e of this Section shall be met; or

b. the pH of the domestic septage shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 30 minutes and the site restrictions in Subsection C.2.e.i - iv of this Section shall be met.

D. Vector Attraction Reduction

I.a. One of the vector attraction reduction requirements in Subsection D.2.a - j of this Section shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in Subsection D.2.a - h of this Section shall be met when bulk sewage sludge is applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in Subsection D.2.a - h of this Section shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

d. One of the vector attraction reduction requirements in Subsection D.2.i, j, or k shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

2.a. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38 percent (see calculation procedures in *Environmental Regulations and Technology - Control of Pathogens and Vector Attraction in Sewage Sludge*, EPA-625/R-92/013, 1992, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268).

b. When the 38 percent volatile solids reduction requirement in Subsection D.2.a of this Section cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37° C. When at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17 percent, vector attraction reduction is achieved.

c. When the 38 percent volatile solids reduction requirement in Subsection D.2.a of this Section cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2 percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20° C. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15 percent, vector attraction reduction is achieved.

d. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° C.

e. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40° C and the average temperature of the sewage sludge shall be higher than 45° C.

f. The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

g. The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75 percent based on the moisture content and total solids prior to mixing with other materials.

h. The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90 percent based on the moisture content and total solids prior to mixing with other materials.

i.i. Sewage sludge shall be injected below the surface of the land.

ii. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

iii. When the sewage sludge that is injected below the surface of the land is Exceptional Quality with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

j.i. Sewage sludge applied to the land surface shall be incorporated into the soil within six hours after application to the land, unless otherwise specified by the permitting authority.

ii. When sewage sludge that is incorporated into the soil is Exceptional Quality with respect to pathogens, the sewage sludge shall be applied to the land within eight hours after being discharged from the pathogen treatment process.

k. The pH of domestic septage shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 30 minutes.

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

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

### §3113. Incineration

#### A. Applicability

1. This Section applies to a person who fires only sewage sludge or sewage sludge and auxiliary fuel, as defined in Subsection B of this Section, in a sewage sludge incinerator, to a sewage sludge incinerator, as defined in Subsection B of this Section, and to sewage sludge or sewage sludge and auxiliary fuel fired in a sewage sludge incinerator.

2. This Section applies to the exit gas from a sewage sludge incinerator stack.

B. Special Definitions. All terms not defined below shall have the meaning given them in LAC 33:IX.3101.H and in LAC 33:III.111.

*Air Pollution Control Device*—one or more processes used to treat the exit gas from a sewage sludge incinerator stack.

*Auxiliary Fuel*—fuel used to augment the fuel value of sewage sludge. This includes, but is not limited to, natural gas, fuel oil, coal, gas generated during anaerobic digestion of sewage sludge, and municipal solid waste (not to exceed 30 percent of the dry weight of sewage sludge and auxiliary fuel together). Hazardous wastes are not auxiliary fuel.

*Average Daily Concentration*—the arithmetic mean of the concentration of a pollutant in milligrams per kilogram of sewage sludge (dry weight basis) in the samples collected and analyzed in a month.

*Control Efficiency*—the mass of a pollutant in the sewage sludge fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack divided by the mass of the pollutant in the sewage sludge fed to the incinerator.

*Dispersion Factor*—the ratio of the increase in the ground level ambient air concentration for a pollutant at or beyond the property line of the site where the sewage sludge incinerator is located to the mass emission rate for the pollutant from the incinerator stack.

*Fluidized Bed Incinerator*—an enclosed device in which organic matter and inorganic matter in sewage sludge are combusted in a bed of particles suspended in the combustion chamber gas.

*Hourly Average*—the arithmetic mean of all measurements, taken during an hour. At least two measurements must be taken during the hour.

*Incineration*—the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

*Incinerator Operating Combustion Temperature*—the arithmetic mean of the temperature readings in the hottest zone of the furnace recorded in a day (24 hours) when the temperature is averaged and recorded at least hourly during the hours the incinerator operates in a day.

*Monthly Average*—the arithmetic mean of the hourly averages for the hours a sewage sludge incinerator operates during the month.

*Performance Test Combustion Temperature*—the arithmetic mean of the average combustion temperature in the hottest zone of the furnace for each of the runs in a performance test.

*Risk Specific Concentration*—the allowable increase in the average daily ground level ambient air concentration for a pollutant from the incineration of sewage sludge at or beyond the property line of the site where the sewage sludge incinerator is located.

*Sewage Sludge Feed Rate*—either the average daily amount of sewage sludge fired in all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located for the number of days in a 365-day period that each sewage sludge incinerator operates, or the average daily design capacity for all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located.

*Sewage Sludge Incinerator*—an enclosed device in which only sewage sludge or sewage sludge and auxiliary fuel are fired.

*Stack Height*—the difference between the elevation of the top of a sewage sludge incinerator stack and the elevation of the ground at the base of the stack when the difference is equal to or less than 214 feet (65 meters). When the difference is greater than 214 feet (65 meters), stack height is the creditable stack height determined in accordance with LAC 33:III.921.

*Standard*—a standard of performance proposed or promulgated under this Subchapter.

*Stationary Source*—any building, structure, facility, or installation that emits or may emit any air pollutant.

*Total Hydrocarbons*—the organic compounds in the exit gas from a sewage sludge incinerator stack measured using a flame ionization detection instrument referenced to propane.

*Wet Electrostatic Precipitator*—an air pollution control device that uses both electrical forces and water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

*Wet Scrubber*—an air pollution control device that uses water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

### C. General Requirements

1. No person shall fire sewage sludge or sewage sludge and auxiliary fuel in a sewage sludge incinerator except in compliance with the requirements in this Section.

#### 2. Performance Tests for New Stationary Sources

a. Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of such facility and at such other times as may be required by the state administrative authority, the owner or operator of such facility shall conduct performance test(s) and furnish the state administrative authority a written report of the results of such performance test(s).

b. Performance tests shall be conducted and data reduced in accordance with the test methods and procedures contained for each applicable requirement in Subsections D, E, and F of this Section, unless the state administrative authority:

- i. specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
- ii. approves the use of an equivalent method;

iii. approves the use of an alternative method the results of which have been determined by the state administrative authority to be adequate for indicating whether a specific source is in compliance;

iv. waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means, to the state administrative authority's satisfaction, that the affected facility is in compliance with the standard; or

v. approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this Subparagraph shall be construed to abrogate the state administrative authority's right to require additional testing if deemed necessary for proper determination of the standard of performance of the new stationary source.

c. Performance tests shall be conducted under such conditions as the state administrative authority shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the state administrative authority such records as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of start-up, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

d. The owner or operator of an affected facility shall provide the state administrative authority at least 30 days prior notice of any performance test, except as otherwise specified in this Subsection, to afford the state administrative authority the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the state administrative authority as soon as possible of any delay in the original test date either by providing at least seven days prior notice of the rescheduled date of the performance test or by arranging a rescheduled date with the state administrative authority by mutual agreement.

e. The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

i. sampling ports adequate for test methods applicable to such facility, including:

(a) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(b) providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

- ii. safe sampling platform(s);
- iii. safe access to sampling platform(s); and
- iv. utilities for sampling and testing equipment.

f. Unless otherwise specified in the applicable parts of this Paragraph, each performance test shall consist of three separate runs using the applicable test method. Each

run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the state administrative authority's approval, be determined using the arithmetic mean of the results of the two other runs.

3. In conducting the performance tests required in Subsection C.2 of this Section, the owner or operator shall use as reference methods and procedures the test methods referenced in LAC 33:IX.3101.G or other methods and procedures as specified in this Section, except as provided for in Subsection C.2.b of this Section.

4.a. The owner or operator of any sewage sludge incinerator subject to the provisions of this Subchapter shall conduct a performance test during which the monitoring and recording devices required under Subsection F.2, 4, 6, 8.a, and 9 of this Section are installed and operating and for which the sampling and analysis procedures required under Subsection G.1.d of this Section are performed as follows:

i. for incinerators that commenced construction or modification on or before April 18, 1986, the performance test shall be conducted within 360 days of the effective date of these regulations, unless the monitoring and recording devices required under Subsection F.2, 4, 6, 8.a, and 9 of this Section were installed and operating and the sampling and analysis procedures required under Subsection G.1.d of this Section were performed during the most recent performance test and a record of the measurements taken during the performance test is available for review by the state administrative authority; and

ii. for incinerators that commence construction or modification on or after the effective date of these regulations, the date of the performance test shall be determined by the requirements in Subsection C.2 of this Section.

b. The owner or operator shall provide the state administrative authority at least 30 days prior notice of the performance test to afford the state administrative authority the opportunity to have an observer present.

5. The owner or operator of any sewage sludge incinerator, other than a multiple hearth, fluidized bed, or electric incinerator or any sewage sludge incinerator equipped with a control device other than a wet scrubber, shall submit a plan to the state administrative authority for approval for monitoring and recording incinerator and control device operation parameters. The plan shall be submitted to the state administrative authority as follows:

a. no later than 90 days after October 6, 1988, for sources that have provided notification of commencement of construction prior to October 6, 1988;

b. no later than 90 days after the notification of commencement of construction, for sources that provide notification of commencement of construction on or after October 6, 1988; and

c. at least 90 days prior to the date on which the new control device becomes operative for sources switching to a control device other than a wet scrubber.

#### D. Pollutant Limits

1. Firing of sewage sludge in a sewage sludge incinerator shall not violate the requirements in the national emission standard for beryllium in subpart C of 40 CFR part 61 (as incorporated by reference at LAC 33:III.5116).

2. Firing of sewage sludge in a sewage sludge incinerator shall not violate the requirements in the national emission standard for mercury in subpart E of 40 CFR part 61 (as incorporated by reference at LAC 33:III.5116).

#### 3. Pollutant Limit - Lead

a. The average daily concentration for lead in sewage sludge fed to a sewage sludge incinerator shall not exceed the concentration calculated using equation (4).

$$C = \frac{0.1 \times NAAQS \times 86,400}{DF \times (1 - CE) \times SF} \quad \text{Equation (4)}$$

Where:

C = average daily concentration of lead in sewage sludge.

NAAQS = national Ambient Air Quality Standard for lead in micrograms per cubic meter.

DF = dispersion factor in micrograms per cubic meter per gram per second.

CE = sewage sludge incinerator control efficiency for lead in hundredths.

SF = sewage sludge feed rate in metric tons per day (dry weight basis).

b. The dispersion factor (DF) in equation (4) shall be determined from an air dispersion model in accordance with Subsection D.5 of this Section.

i. When the sewage sludge stack height is 214 feet (65 meters) or less, the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (4).

ii. When the sewage sludge incinerator stack height exceeds 214 feet (65 meters), the creditable stack height shall be determined in accordance with LAC 33:III.921 and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (4).

c. The control efficiency (CE) for equation (4) shall be determined from a performance test of the sewage sludge incinerator in accordance with Subsection D.5 of this Section.

#### 4. Pollutant Limit - Arsenic, Cadmium, Chromium, and Nickel

a. The average daily concentration for arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator each shall not exceed the concentration calculated using equation (5).

$$C = \frac{RSC \times 86,400}{DF \times (1 - CE) \times SF} \quad \text{Equation (5)}$$

Where:

C = average daily concentration of arsenic, cadmium, chromium, or nickel in sewage sludge.

CE = sewage sludge incinerator control efficiency for arsenic, cadmium, chromium, or nickel in hundredths.

DF = dispersion factor in micrograms per cubic meter per gram per second.

RSC = risk specific concentration for arsenic, cadmium, chromium, or nickel in micrograms per cubic meter.

SF = sewage sludge feed rate in metric tons per day (dry weight basis).

b. The risk specific concentrations for arsenic, cadmium, and nickel used in equation (5) shall be obtained from Table 1 of LAC 33:IX.3113.D.

Table 1 of LAC 33:IX.3113.D	
Risk Specific Concentration for Arsenic, Cadmium, and Nickel	
Pollutant	Risk Specific Concentration (micrograms per cubic meter)
Arsenic	0.023
Cadmium	0.057
Nickel	2.0

c. The risk specific concentration for chromium used in equation (5) shall be obtained from Table 2 of LAC 33:IX.3113.D or shall be calculated using equation (6).

Table 2 of LAC 33:IX.3113.D	
Risk Specific Concentration For Chromium	
Type of Incinerator	Risk Specific Concentration (micrograms per cubic meter)
Fluidized bed with wet scrubber	0.65
Fluidized bed with wet scrubber and wet electrostatic precipitator	0.23
Other types with wet scrubber	0.064
Other types with wet scrubber and wet electrostatic precipitator	0.016

$$RSC = \frac{0.0085}{r} \quad \text{Equation (6)}$$

Where:

RSC = risk specific concentration for chromium in micrograms per cubic meter used in equation (5).

r = decimal fraction of the hexavalent chromium concentration in the total chromium concentration measured in the exit gas from the sewage sludge incinerator stack in hundredths.

d. The dispersion factor (DF) in equation (5) shall be determined from an air dispersion model in accordance with Subsection D.5 of this Section.

i. When the sewage sludge incinerator stack height is equal to or less than 214 feet (65 meters), the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (5).

ii. When the sewage sludge incinerator stack height is greater than 214 feet (65 meters), the creditable stack height shall be determined in accordance with LAC 33:III.921 and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (5).

e. The control efficiency (CE) for equation (5) shall be determined from a performance test of the sewage sludge

incinerator in accordance with Subsection D.5 of this Section.

#### 5. Air Dispersion Modeling and Performance Testing

a. The air dispersion model used to determine the dispersion factor in Subsection D.3.b and 4.d of this Section shall be appropriate for the geographical, physical, and population characteristics at the sewage sludge incinerator site. The performance test used to determine the control efficiencies in Subsection D.3.c and 4.e of this Section shall be appropriate for the type of sewage sludge incinerator.

b. For air dispersion modeling initiated after September 3, 1999, the modeling results shall be submitted to the state administrative authority 30 days after completion of the modeling. In addition to the modeling results, the submission shall include a description of the air dispersion model and the values used for the model parameters.

c. The following procedures, at a minimum, shall apply in conducting performance tests to determine the control efficiencies in Subsection D.3.c and 4.e of this Section after September 3, 1999:

i. the performance test shall be conducted under representative sewage sludge incinerator conditions at the highest expected sewage sludge feed rate within the design capacity of the sewage sludge incinerator;

ii. the state administrative authority shall be notified at least 30 days prior to any performance test so the state administrative authority may have the opportunity to observe the test. The notice shall include a test protocol with incinerator operating conditions and a list of test methods to be used; and

iii. each performance test shall consist of three separate runs using the applicable test method. The control efficiency for a pollutant shall be the arithmetic mean of the control efficiencies for the pollutant from the three runs.

d. The pollutant limits in Subsection D.3 and 4 of this Section shall be submitted to the state administrative authority no later than 30 days after completion of the air dispersion modeling and performance test.

e. Significant changes in geographic or physical characteristics at the incinerator site or in incinerator operating conditions require new air dispersion modeling or performance testing to determine a new dispersion factor or a new control efficiency that will be used to calculate revised pollutant limits.

#### 6. Standards for Particulate Matter

a. No owner or operator of any sewage sludge incinerator subject to the provisions of this Section shall discharge or cause the discharge into the atmosphere of:

i. particulate matter at a rate in excess of 0.65 g/kg dry sewage sludge input (1.30 lb/ton dry sewage sludge input); and

ii. any gases that exhibit 20 percent opacity or greater.

b. The owner or operator of a sewage sludge incinerator shall determine compliance with the particulate matter emission standards in Subsection D.6.a of this Section as follows:

i. the emission rate (E) of particulate matter for each run shall be computed using the following equation:

$$E = K(C_s Q_{sd})/S$$

where:

E = emission rate of particulate matter, g/kg (lb/ton) of dry sewage sludge input.

$C_s$  = concentration of particulate matter, g/dscm (g/dscf).

$Q_{sd}$  = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

S = charging rate of dry sewage sludge during the run, kg/hr (lb/hr).

K = conversion factor, 1.0 g/g [4.409 lb<sup>2</sup>/(g-ton)];

ii. method 5 shall be used to determine the particulate matter concentration ( $C_s$ ) and the volumetric flow rate ( $Q_{sd}$ ) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf);

iii. the dry sewage sludge charging rate (S) for each run shall be computed using either of the following equations:

$$S = K_m S_m R_{dm} / \Theta$$

$$S = K_v S_v R_{dv} / \Theta$$

where:

S = charging rate of dry sewage sludge, kg/hr (lb/hr).

$S_m$  = total mass of sewage sludge charged, kg (lb).

$R_{dm}$  = average mass of dry sewage sludge per unit mass of sludge charged, mg/mg (lb/lb).

$\Theta$  = duration of run, in minutes.

$K_m$  = conversion factor, 60 min/hr.

$S_v$  = total volume of sewage sludge charged, m<sup>3</sup> (gal).

$R_{dv}$  = average mass of dry sewage sludge per unit volume of sewage charged, mg/liter (lb/ft<sup>3</sup>).

$K_v$  = conversion factor, 60 X 10<sup>3</sup> (liter-kg-min)/(m<sup>3</sup>-mg-hr) [8.021 (ft<sup>3</sup>-min)/(gal-hr)].

iv. the flow measuring device of Subsection F.2 of this Section shall be used to determine the total mass ( $S_m$ ) or volume ( $S_v$ ) of sewage sludge charged to the incinerator during each run. If the flow measuring device is on a time rate basis, readings shall be taken and recorded at 5-minute intervals during the run and the total charge of sewage sludge shall be computed using the following equations, as applicable:

$$S_m = \sum_{i=1}^n Q_{mi} / \Theta_i$$

$$S_v = \sum_{i=1}^n Q_{vi} / \Theta_i$$

where:

$Q_{mi}$  = average mass flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", kg/min (gal/min).

$Q_{vi}$  = average volume flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", m<sup>3</sup>/min (gal/min).

$\Theta_i$  = duration of interval "i", min;

v. samples of the sewage sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends, and "209 F. Method for Solid and Semisolid Samples" (40 CFR 60.17, incorporated by reference in LAC 33:III.3003) shall be used to determine dry

sewage sludge content of each sample (total solids residue), except that:

(a). evaporating dishes shall be ignited to at least 103°C rather than the 550°C specified in step 3(a)(1);

(b). determination of volatile residue, step 3(b) may be deleted;

(c). the quantity of dry sewage sludge per unit sewage sludge charged shall be determined in terms of mg/liter (lb/ft<sup>3</sup>) or mg/mg (lb/lb); and

(d). the average dry sewage sludge content shall be the arithmetic average of all the samples taken during the run; and

vi. method 9 and the procedures in 40 CFR 60.11 (incorporated by reference in LAC 33:III.3003) shall be used to determine opacity.

#### E. Operational Standard C Total Hydrocarbons

1. The total hydrocarbons concentration in the exit gas from a sewage sludge incinerator shall be corrected for 0 percent moisture by multiplying the measured total hydrocarbons concentration by the correction factor calculated using equation (7).

$$\text{Correction factor (percent moisture)} = \frac{1}{(1 - X)} \quad \text{Equation (7)}$$

Where:

X = decimal fraction of the percent moisture in the sewage sludge incinerator exit gas in hundredths.

2. The total hydrocarbons concentration in the exit gas from a sewage sludge incinerator shall be corrected to 7 percent oxygen by multiplying the measured total hydrocarbons concentration by the correction factor calculated using equation (8).

$$\text{Correction factor (oxygen)} = \frac{14}{(21 - Y)} \quad \text{Equation (8)}$$

Where:

Y = percent oxygen concentration in the sewage sludge incinerator stack exit gas (dry volume/dry volume).

3. The monthly average concentration for total hydrocarbons in the exit gas from a sewage sludge incinerator stack, corrected for 0 percent moisture using the correction factor from equation (7) and to 7 percent oxygen using the correction factor from equation (8), shall not exceed 100 parts per million on a volumetric basis when measured using the instrument required by Subsection F.5 of this Section.

#### F. Management Practices

1. The owner or operator of a sewage sludge incinerator shall provide access to the sewage sludge charged so that a well-mixed representative grab sample of the sewage sludge can be obtained.

2.a. A flow measuring device that can be used to determine either the mass or volume of sewage sludge charged to the incinerator shall be installed, calibrated, maintained, and properly operated.

b. The flow measuring device shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

c. The flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator, unless specified otherwise by the state administrative authority.

3.a. A weighing device for determining the mass of any municipal solid waste charged to the incinerator when sewage sludge and municipal solid waste are incinerated together shall be installed, calibrated, maintained, and properly operated.

b. The weighing device shall have an accuracy of  $\pm 5$  percent over its operating range.

4.a. For incinerators equipped with a wet scrubbing device, a monitoring device that continuously measures and records the pressure drop of the gas flow through the wet scrubbing device shall be installed, calibrated, maintained, and properly operated.

b. Where a combination of wet scrubbers is used in series, the pressure drop of the gas flow through the combined system shall be continuously monitored.

c. The device used to monitor scrubber pressure drop shall be certified by the manufacturer to be accurate within  $\pm 250$  pascals ( $\pm 1$  inch water gauge) and shall be calibrated on an annual basis in accordance with the manufacturer's instructions.

5.a. An instrument that continuously measures and records the total hydrocarbons concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

b. The total hydrocarbons instrument shall employ a flame ionization detector, have a heated sampling line maintained at a temperature of  $150^{\circ}$  C or higher at all times, and be calibrated at least once every 24-hour operating period using propane.

6.a. An instrument that continuously measures and records the oxygen concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

b. The oxygen monitor shall be located upstream of any rabble shaft cooling air inlet into the incinerator exhaust gas stream, fan, ambient air recirculation damper, or any other source of dilution air.

c. The oxygen monitoring device shall be certified by the manufacturer to have a relative accuracy of  $\pm 5$  percent over its operating range and shall be calibrated according to method(s) prescribed by the manufacturer at least once each 24-hour operating period.

7. An instrument that continuously measures and records information used to determine the moisture content in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

8.a. An instrument that continuously records combustion temperature at every hearth in multiple hearth furnaces, in the bed and outlet of fluidized bed incinerators, and in the drying, combustion, and cooling zones of electric incinerators shall be installed, calibrated, maintained, and properly operated.

b. For multiple hearth furnaces, a minimum of one thermocouple shall be installed in each hearth in the cooling and drying zones, and a minimum of two thermocouples shall be installed in each hearth in the combustion zone.

c. For electric incinerators, a minimum of one thermocouple shall be installed in the drying zone and one in the cooling zone, and a minimum of two thermocouples shall be installed in the combustion zone.

d. Each temperature measuring device shall be certified by the manufacturer to have an accuracy of  $\pm 5$  percent over its operating range.

e. Operation of a sewage sludge incinerator shall not cause the operating combustion temperature for the sewage sludge incinerator to exceed the performance test combustion temperature by more than 20 percent.

9.a. A device for measuring the fuel flow to the incinerator shall be installed, calibrated, maintained, and properly operated.

b. The fuel flow measuring device shall be certified by the manufacturer to have an accuracy of  $\pm 5$  percent over its operating range.

c. The fuel flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator, unless specified otherwise by the state administrative authority.

10.a. An air pollution control device shall be appropriate for the type of sewage sludge incinerator and the operating parameters for the air pollution control device shall be adequate to indicate proper performance of the air pollution control device.

b. Operation of the air pollution control device shall not cause a significant exceedance of the average value for the air pollution control device operating parameters from the performance test required by Subsection D.3.c and 4.e of this Section nor shall the operation of the air pollution control device violate any other requirements of this Section for which the air pollution control device is subjected.

11. The permittee shall collect and analyze sewage sludge fed to a sewage sludge incinerator for dry sludge content and volatile solids content using the method specified at Subsection D.6.b.v of this Section, except that the determination of volatile solids, step (3) (b) of the method shall not be deleted.

12. Sewage sludge shall not be fired in a sewage sludge incinerator if it is likely to adversely affect a threatened or endangered species, listed under section 4 of the Endangered Species Act, or its designated critical habitat.

13. The instruments required in Subsection F.2 - 9 of this Section shall be appropriate for the type of sewage sludge incinerator.

14. The state administrative authority may exempt the owner or operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator from the daily sampling and analysis of sludge feed in Subsections F.11 and G.1.d of this Section and from the recordkeeping requirement in Subsection H.2.p of this Section for the volatile solids content, only, of the sewage sludge charged to the incinerator during all periods of this incinerator following the performance test if:

a. the particulate matter emission rate measured during the performance test required under Subsection C.4 of this Section is less than or equal to 0.38 g/kg of dry sewage sludge input (0.75 lb/ton); and

b. the state administrative authority determines that the requirements will not be necessary to evaluate the effects

upon the environment and human health resulting from the emissions from the sewage sludge incinerator.

G Frequency of Monitoring. Except as specified otherwise in this Section, the frequency of monitoring shall be as follows:

1. Sewage Sludge

a. The frequency of monitoring for beryllium shall be as required in subpart C of 40 CFR part 61 (as incorporated by reference in LAC 33:III.5116), and for mercury as required in subpart E of 40 CFR part 61 (as incorporated by reference in LAC 33:III.5116).

b. The frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel in sewage sludge fed to a sewage sludge incinerator shall be the frequency in Table 1 of LAC 33:IX.3113.G.

Table 1 of LAC 33:IX.3113.G	
Frequency of Monitoring – Incineration	
Amount of sewage sludge <sup>1</sup> (metric tons per 365 day period)	Frequency
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (4 times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (6 times per year)
Equal to or greater than 15,000	Once per month (12 times per year)
<sup>1</sup> Amount of sewage sludge fired in a sewage sludge incinerator (dry weight basis)	

c. After the sewage sludge has been monitored for two years at the frequency in Table 1 of LAC 33:IX.3113.G, the state administrative authority may reduce the frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel.

d. The frequency of monitoring for dry sewage sludge content and volatile solids content of the sewage sludge shall be once per day as a grab sample of the sewage sludge fed to the incinerator.

2. Total Hydrocarbons, Oxygen Concentration, Information to Determine Moisture Content, and Combustion Temperatures. The total hydrocarbons concentration and oxygen concentration in the exit gas from a sewage sludge incinerator stack, the information used to measure moisture content in the exit gas, and the combustion temperatures for the sewage sludge incinerator shall be monitored continuously.

3. Air Pollution Control Device Operating Parameters. Unless specified otherwise in this Subchapter, the frequency of monitoring for the appropriate air pollution control device operating parameters shall be daily.

4.a. The frequency of monitoring shall be as specified in this Section for any performance testing or other sampling requirements not covered above.

b. If the frequency of monitoring is not specified, then the frequency of monitoring shall be as specified by the state administrative authority.

H. Recordkeeping

1. If the owner/operator of a sewage sludge incinerator is the person who prepares sewage sludge, the owner/operator of the sewage sludge incinerator shall keep a record of the annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge

management practice used and retain such record for a period of five years.

2. The owner/operator of a sewage sludge incinerator shall develop the following information and shall retain this information for five years:

a. the concentration of lead, arsenic, cadmium, chromium, and nickel in the sewage sludge fed to the sewage sludge incinerator;

b. the total hydrocarbons concentrations in the exit gas from the sewage sludge incinerator stack;

c. information that indicates the requirements in the national emission standard for beryllium in subpart C of 40 CFR part 61 (as incorporated by reference at LAC 33:III.5116) are met;

d. information that indicates the requirements in the national emission standard for mercury in subpart E of 40 CFR part 61 (as incorporated by reference at LAC 33:III.5116) are met;

e. the operating combustion temperatures for the sewage sludge incinerator;

f. values for the air pollution control device operating parameters;

g. the oxygen concentration and information used to measure moisture content in the exit gas from the sewage sludge incinerator stack;

h. the sewage sludge feed rate;

i. the stack height for the sewage sludge incinerator;

j. the dispersion factor for the site where the sewage sludge incinerator is located;

k. the control efficiency for lead, arsenic, cadmium, chromium, and nickel for each sewage sludge incinerator;

l. the risk specific concentration for chromium calculated using equation (6), if applicable;

m. a calibration and maintenance log for the instruments used to measure the total hydrocarbons concentration and oxygen concentration in the exit gas from the sewage sludge incinerator stack, the information needed to determine moisture content in the exit gas, and the combustion temperatures;

n. results of the particulate matter testing required in Subsection D.6.b of this Section;

o. for incinerators equipped with a wet scrubbing device, a record of the measured pressure drop of the gas flow through the wet scrubbing device, as required by Subsection F.4 of this Section;

p. a record of the rate of sewage sludge fed to the incinerator, the fuel flow to the incinerator, and the total solids and volatile solids content of the sewage sludge charged to the incinerator; and

q. results of all applicable performance tests required in this Section.

I. Reporting

1. If the owner/operator of a sewage sludge incinerator is the person who prepares the sewage sludge, the owner/operator shall submit the information in Subsection H.1. of this Section to the state administrative authority on February 19 of each year.

2. The owner/operator of a sewage sludge incinerator shall submit the information in Subsection H.2.a - q of this Section to the state administrative authority on February 19 of each year.

3.a. In addition to the reporting requirements in Subsection I.1 and 2 of this Section, the owner/operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator subject to the provisions of this Subchapter shall submit to the state administrative authority on February 19 and August 19 of each year (semiannually) a report in writing that contains the following:

i. a record of average scrubber pressure drop measurements for each period of 15 minutes duration or more during which the pressure drop of the scrubber was less than, by a percentage specified below, the average scrubber pressure drop measured during the most recent performance test. The percent reduction in scrubber pressure drop for which a report is required shall be determined as follows:

(a). for incinerators that achieved an average particulate matter emission rate of 0.38 kg/mg (0.75 lb/ton) dry sewage sludge input or less during the most recent performance test, a scrubber pressure drop reduction of more than 30 percent from the average scrubber pressure drop recorded during the most recent performance test shall be reported; and

(b). for incinerators that achieved an average particulate matter emission rate of greater than 0.38 kg/mg (0.75 lb/ton) dry sewage sludge input during the most recent performance test, a percent reduction in pressure drop greater than that calculated according to the following equation:

$$P = -111E + 72.15$$

where:

P = percent reduction in pressure drop.

E = average particulate matter emissions (kg/megagram); and

ii. a record of average oxygen content in the incinerator exhaust gas for each period of 1-hour duration or more that the oxygen content of the incinerator exhaust gas exceeds the average oxygen content measured during the most recent performance test by more than 3 percent.

b. The owner or operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator from which the average particulate matter emission rate measured during the performance test required at Subsection C.4 of this Section exceeds 0.38 g/kg of dry sewage sludge input (0.75 lb/ton of dry sewage sludge input) shall include in the report for each calendar day that a decrease in scrubber pressure drop or increase in oxygen content of exhaust gas is reported, a record of the following:

i. scrubber pressure drop averaged over each 1-hour incinerator operating period;

ii. oxygen content in the incinerator exhaust averaged over each 1-hour incinerator operating period;

iii. temperatures of every hearth in multiple hearth incinerators, the bed and outlet of fluidized bed incinerators, and the drying, combustion, and cooling zones of electric incinerators averaged over each 1-hour incinerator operating period;

iv. rate of sewage sludge charged to the incinerator averaged over each 1-hour incinerator operating period;

v. incinerator fuel use averaged over each 8-hour incinerator operating period; and

vi. moisture and volatile solids content of the daily grab sample of sewage sludge charged to the incinerator.

c. The owner or operator of any sewage sludge incinerator other than a multiple hearth, fluidized bed, or electric incinerator or any sewage sludge incinerator equipped with a control device other than a wet scrubber shall include in the semiannual report a record of control device operation measurements, as specified in the plan approved under Subsection C.5 of this Section.

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

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

### Appendix P

#### Procedure to Determine the Annual Whole Sludge Application Rate for a Sewage Sludge

LAC 33:IX.3103.D.1.d.ii requires that the product of the concentration for each pollutant listed in Table 4 of LAC 33:IX.3103.D in sewage sludge sold or given away in a bag or other container for application to the land and the annual whole sludge application rate (AWSAR) for the sewage sludge not cause the annual pollutant loading rate for the pollutant in Table 4 of LAC 33:IX.3103.D to be exceeded. This Appendix contains the procedure used to determine the AWSAR for a sewage sludge that does not cause the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded.

The relationship between the annual pollutant loading rate (APLR) for a pollutant and the annual whole sludge application rate (AWSAR) for a sewage sludge is shown in equation (1).

$$APLR = C \times AWSAR \times 0.001 \text{ Equation (1)}$$

Where:

APLR = annual pollutant loading rate in kilograms per hectare per 365 day period.

C = pollutant concentration in milligrams per kilogram of total solids (dry weight basis).

AWSAR = annual whole sludge application rate in metric tons per hectare per 365 day period (dry weight basis).

0.001 = a conversion factor.

To determine the AWSAR, equation (1) is rearranged into equation (2):

$$AWSAR = \frac{APLR}{C \times 0.001} \text{ Equation (2)}$$

The procedure used to determine the AWSAR for a sewage sludge is presented below.

Procedure:

1. Analyze a sample of the sewage sludge to determine the concentration for each of the pollutants listed in Table 4 of LAC 33:IX.3103.D in the sewage sludge.

2. Using the pollutant concentrations from Step 1 and the APLRs from Table 4 of LAC 33:IX.3103.D, calculate an AWSAR for each pollutant using equation (2) above.

3. The AWSAR for the sewage sludge is the lowest AWSAR calculated in Step 2.

**Appendix Q**  
**Pathogen Treatment Processes**

A. Processes to Significantly Reduce Pathogens (PSRP)

1. **Aerobic Digestion.** Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20°C and 60 days at 15°C.

2. **Air Drying.** Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of three months. During two of the three months, the ambient average daily temperature is above 0°C.

3. **Anaerobic Digestion.** Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35° to 55°C and 60 days at 20°C.

4. **Composting.** Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 40°C or higher and remains at 40°C or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55°C.

5. **Lime Stabilization.** Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after two hours of contact.

B. Processes to Further Reduce Pathogens (PFRP)

1. **Composting.** Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55°C or higher for three days. Using the windrow composting method, the temperature of the sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period when the compost is maintained at 55°C or higher, there shall be a minimum of five turnings of the windrow.

2. **Heat Drying.** Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10 percent or lower. Either the temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80°C.

3. **Heat Treatment.** Liquid sewage sludge is heated to a temperature of 180°C or higher for 30 minutes.

4. **Thermophilic Aerobic Digestion.** Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 55° to 60°C.

5. **Beta Ray Irradiation.** Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20°C).

6. **Gamma Ray Irradiation.** Sewage sludge is irradiated with gamma

rays from certain isotopes, such as <sup>60</sup> Cobalt and <sup>137</sup> Cesium, at dosages of at least 1.0 megarad at room temperature (approximately 20°C).

7. **Pasteurization.** The temperature of the sewage sludge is maintained at 70°C or higher for 30 minutes or longer.

**Appendix R**  
**Financial Assurance Documents**

Document 1. Liability Endorsement

COMMERCIAL BLENDER, COMPOSTER, OR MIXER  
OF SEWAGE SLUDGE LIABILITY ENDORSEMENT

Secretary

Louisiana Department of Environmental Quality

Post Office Box 82231

Baton Rouge, Louisiana 70884-2231

Attention: Office of Management and Finance, Financial  
Services Division

Dear Sir:

(A). This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with [name of the insured, which must be either the permit holder, the applicant, or the operator. (Note: The operator will provide the liability-insurance documentation only when the permit holder/applicant is a public governing body and the public governing body is not the operator.)] The insured's obligation to demonstrate financial responsibility is required in accordance with *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A. The coverage applies at [list the site identification number, site name, facility name, facility permit number, and facility address] for sudden and accidental occurrences. The limits of liability are per occurrence, and annual aggregate, per site, exclusive of legal-defense costs.

(B). The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with Subclauses (1) - (5), below, are hereby amended to conform with Subclauses (1) - (5), below:

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.3109.A.3, 4, or 5.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.

(4). Cancellation of this endorsement, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of this endorsement will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). Attached is the endorsement which forms part of the policy [policy number] issued by [name of insurer], herein

called the insurer, of [address of the insurer] to [name of the insured] of [address of the insured], this [date]. The effective date of said policy is [date].

(D). I hereby certify that the wording of this endorsement is identical to the wording specified in LAC 33:IX.3109.A.2.b, effective on the date first written above and that insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]  
[Typed name of authorized representative of insurer]  
[Title of authorized representative of insurer]  
[Address of authorized representative of insurer]

Document 2. Certificate of Insurance

COMMERCIAL BLENDER, COMPOSTER, OR MIXER  
OF SEWAGE SLUDGE FACILITY CERTIFICATE OF  
LIABILITY INSURANCE

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 82231  
Baton Rouge, Louisiana 70884-2231  
Attention: Office of Management and Finance, Financial  
Services Division

Dear Sir:

(A). [Name of insurer], the "insurer," of [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured, which must be either the permit holder or applicant of the facility], the "insured," of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A. The coverage applies at [list agency interest number, site name, facility name, facility permit number, and site address] for sudden and accidental occurrences. The limits of liability are each occurrence and annual aggregate, per site, exclusive of legal-defense costs. The coverage is provided under policy number [policy number], issued on [date]. The effective date of said policy is [date].

(B). The insurer further certifies the following with respect to the insurance described in Paragraph (A):

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.3109.A.3, 4, or 5.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to him a signed duplicate original of the policy and all endorsements.

(4). Cancellation of the insurance, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of the insurance will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:IX.3109.A.2.c, as such regulations were constituted on the date first written above, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]  
[Typed name of authorized representative of insurer]  
[Title of authorized representative of insurer]  
[Address of authorized representative of insurer]

Document 3. Letter of Credit

COMMERCIAL BLENDER, COMPOSTER, OR MIXER  
OF SEWAGE SLUDGE FACILITY IRREVOCABLE  
LETTER OF CREDIT

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 82231  
Baton Rouge, Louisiana 70884-2231  
Attention: Office of Management and Finance, Financial  
Services Division

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. [number] at the request and for the account of [permit holder's or applicant's name and address] for its [list site identification number, site name, facility name, and facility permit number] at [location], Louisiana, in favor of any governmental body, person, or other entity for any sum or sums up to the aggregate amount of U.S. dollars [amount] upon presentation of:

(A). A final judgment issued by a competent court of law in favor of a governmental body, person, or other entity and against [permit holder's or applicant's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to the operation of the commercial blender, compost, or mixer of sewage sludge site at the [name of permit holder or applicant] at [site location] as set forth in the *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A.

(B). A sight draft bearing reference to the Letter of Credit No. [number] drawn by the governmental body, person, or other entity, in whose favor the judgment has been rendered as evidenced by documentary requirement in Paragraph (A).

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event we give such notification, any

unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder/applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.3109.A.3.e, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]

[date]

Document 4. Trust Agreement

#### COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY TRUST AGREEMENT/STANDBY TRUST AGREEMENT

This Trust Agreement (the "Agreement") is entered into as of [date] by and between [name of permit holder or applicant], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the state of" or "a national bank" or a "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the state of Louisiana, has established certain regulations applicable to the Grantor, requiring that a permit holder or applicant for a permit of a commercial blender, composter, or mixer of sewage sludge processing facility shall provide assurance that funds will be available when needed for [closure and/or post-closure] care of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected [the Trustee] to be the trustee under this Agreement, and [the Trustee] is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

#### SECTION 1. DEFINITIONS

As used in this Agreement:

(a). The term "Grantor" means the permit holder or applicant who enters into this Agreement and any successors or assigns of the Grantor.

(b). The term "Trustee" means the Trustee who enters into this Agreement and any successor trustee.

(c). The term "Secretary" means the Secretary of the Louisiana Department of Environmental Quality.

(d). The term "Administrative Authority" means the Secretary or a person designated by him to act therefor.

#### SECTION 2. IDENTIFICATION OF FACILITIES AND COST ESTIMATES

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. [On Schedule A, list the agency interest number, site name, facility name, facility permit number, and the annual aggregate amount of liability coverage or current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.]

#### SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party shall have access to the Fund, except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank except for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

#### SECTION 4. PAYMENT FOR CLOSURE AND/OR POST-CLOSURE CARE OR LIABILITY COVERAGE

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of [liability claims, closure and/or post-closure] care of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for [liability claims, closure and/or post-closure] expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

#### SECTION 5. PAYMENTS COMPRISED BY THE FUND

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

#### SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee

shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, except that:

(a). Securities or other obligations of the Grantor, or any owner of the [facility or facilities] or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government.

(b). The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c). The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

#### SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized, at its discretion:

(a). To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b). To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1, et seq., including one which may be created, managed, or underwritten, or one to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares at its discretion.

#### SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a). To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b). To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c). To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d). To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e). To compromise or otherwise adjust all claims in favor of, or against, the Fund.

#### SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and other proper charges and disbursements of the Trustee, shall be paid from the Fund.

#### SECTION 10. ANNUAL VALUATION

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee, within 90 days after the statement has been furnished to the Grantor and the administrative authority, shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

#### SECTION 11. ADVICE OF COUNSEL

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

#### SECTION 12. TRUSTEE COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

#### SECTION 13. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall, in writing, specify to the Grantor, the administrative authority, and the present Trustee by certified mail, 10 days before such change becomes effective, the date on which it assumes administration of the trust. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

**SECTION 14. INSTRUCTIONS TO THE TRUSTEE**

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by the persons designated in the attached Exhibit A or such other persons as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing and signed by the administrative authority. The Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or termination of the authority of any person to act on behalf of the Grantor or administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or administrative authority, except as provided for herein.

**SECTION 15. NOTICE OF NONPAYMENT**

The Trustee shall notify the Grantor and the administrative authority, by certified mail, within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

**SECTION 16. AMENDMENT OF AGREEMENT**

This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist.

**SECTION 17. IRREVOCABILITY AND TERMINATION**

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

**SECTION 18. IMMUNITY AND INDEMNIFICATION**

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any direction by the Grantor or the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all reasonable expenses incurred in its defense in the event that the Grantor fails to provide such defense.

**SECTION 19. CHOICE OF LAW**

This Agreement shall be administered, construed, and enforced according to the laws of the state of Louisiana.

**SECTION 20. INTERPRETATION**

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement

shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized [and their corporate seals to be hereunto affixed] and attested to as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B.3.i, on the date first written above.

WITNESSES: GRANTOR:

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

[Seal]

TRUSTEE:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

[Seal]

THUS DONE AND PASSED in my office in \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in the presence of \_\_\_\_\_ and \_\_\_\_\_, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

\_\_\_\_\_  
Notary Public

(The following is an example of the certification of acknowledgement that must accompany the trust agreement.)

STATE OF LOUISIANA

PARISH OF \_\_\_\_\_

BE IT KNOWN, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared \_\_\_\_\_, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the \_\_\_\_\_, a corporation, for the consideration, uses, and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the \_\_\_\_\_ of said corporation and that he signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of \_\_\_\_\_ and \_\_\_\_\_, competent witnesses, who have hereunto subscribed their name as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTARY PUBLIC

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY FINANCIAL GUARANTEE BOND

Date bond was executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety: [name and business address]

[agency interest number, site name, facility name, facility permit number, and current closure and/or post-closure amount(s) for each facility guaranteed by this bond]

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we the sureties bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit or liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the commercial blender, composteur, or mixer of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required by the Louisiana Administrative Code (LAC), Title 33, Part IX.3109, when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to close is issued by the administrative authority or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:IX.3109.B and obtain written approval from the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety,

THEN, this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification or amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.3109.B and the conditions of the commercial blender, composteur, or mixer of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.3109.B.4.h, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETIES

[Name and Address]

State of incorporation: \_\_\_\_\_

Liability limit: \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[This information must be provided for each cosurety]

Bond Premium: \$ \_\_\_\_\_

COMMERCIAL BLENDER, COMPOSTER,  
OR MIXER OF SEWAGE SLUDGE  
FACILITY PERFORMANCE BOND

Date bond was executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety: [name(s) and business address(es)]

[agency interest number, site name, facility name, facility permit number, facility address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and/or post-closure costs separately)]

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the commercial blender, composteur, or mixer of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

AND, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide financial assurance as specified in *Louisiana Administrative Code (LAC)*, Title 33, Part IX.3109.B and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of LAC 33:IX.3107.B.3, or of its permit, for the facility for which this bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has been found in violation of the post-closure requirements of the LAC 33:IX.3107.B.3, or of its permit for the facility for which this bond guarantees performance of post-closure, the Surety shall either perform post-closure in accordance with the closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.3109.B, and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permit, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.3109.B and the conditions of the commercial blender, composteur, or

mixer of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.3109.B.5.h, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

Document 7. Letter of Credit

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY IRREVOCABLE LETTER OF CREDIT

Secretary

Louisiana Department of Environmental Quality

Post Office Box 82231

Baton Rouge, Louisiana 70884-2231

Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in favor of the Department of Environmental Quality of the state of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the [closure and/or post-closure] fund for its [list agency interest number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars \$ \_\_\_\_\_ upon presentation of:

(i). A sight draft, bearing reference to the Letter of Credit No. \_\_\_\_\_ drawn by the administrative authority, together with;

(ii). A statement, signed by the administrative authority, declaring that the amount of the draft is payable

into the standby trust fund pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder or applicant], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in Louisiana Administrative Code (LAC), Title 33, Part IX.3109.B.6.h, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]

[date]

Document 8. Certificate of Insurance

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR POST-CLOSURE CARE

Name and Address of Insurer: \_\_\_\_\_ (hereinafter called the "Insurer")

Name and Address of Insured: \_\_\_\_\_ (hereinafter called the "Insured") (Note: Insured must be the permit holder or applicant)

Facilities covered: [list the agency interest number, site name, facility name, facility permit number, address, and amount of insurance for closure and/or post-closure care] (These amounts for all facilities must total the face amount shown below.)

Face Amount: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure and/or post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects to the requirements of LAC 33:IX.3109.B, as applicable, and as such regulations were constituted on the date shown

immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the Insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana and that the wording of this certificate is identical to the wording specified in LAC 33:IX.3109.B.7.j, effective on the date shown immediately below.

[Authorized signature of Insurer]  
[Name of person signing]  
[Title of person signing]  
Signature of witness or notary: \_\_\_\_\_  
[Date]

Document 9. Letter from the Chief Financial Officer

COMMERCIAL BLENDER, COMPOSTER, OR  
MIXER OF SEWAGE SLUDGE FACILITY  
LETTER FROM THE CHIEF FINANCIAL  
OFFICER (LIABILITY COVERAGE,  
CLOSURE, AND/OR POST-CLOSURE)

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 82231  
Baton Rouge, Louisiana 70884-2231  
Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

I am the chief financial officer of [name and address of firm, which may be either the permit holder, applicant, or parent corporation of the permit holder or applicant]. This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for [insert "liability coverage," "closure," and/or "post-closure," as applicable] as specified in [insert "Louisiana Administrative Code (LAC), Title 33, Part IX.3109.A," "LAC 33:IX.3109.B," or LAC 33:IX.3109.A and B"].

[Fill out the following four paragraphs regarding facilities and associated liability coverage, and closure and post-closure cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the agency interest number, site name, facility name, and facility permit number.]

(A). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial blender, composteur, or mixer of sewage sludge facilities, whether in Louisiana or not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.3109.A. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard

permit"] of the following commercial blender, composteur, or mixer of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for [insert "closure," "post-closure," or "closure and post-closure"] is demonstrated through a financial test similar to that specified in LAC 33:IX.3109.B or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:IX.3109.B" or "LAC 33:IX.3109.A and B"], [insert "liability coverage," "closure," "post-closure," or "closure and post-closure"] care of the following commercial blender, composteur, or mixer of sewage sludge facilities, whether in Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post-closure care so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following commercial blender, composteur, or mixer of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for liability coverage, closure and/or post-closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.3109.A and/or B. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

PART A. LIABILITY COVERAGE FOR ACCIDENTAL OCCURRENCES

[Fill in Alternative I if the criteria of LAC 33:IX.3109.B.8.a.i are used.]

ALTERNATIVE I

- 1. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_
- \*2. Current assets \$ \_\_\_\_\_
- \*3. Current liabilities \$ \_\_\_\_\_
- \*4. Tangible net worth \$ \_\_\_\_\_
- \*5. If less than 90 percent of assets are located in the U.S., give total U.S. assets \$ \_\_\_\_\_

- |                                       |       |       |
|---------------------------------------|-------|-------|
|                                       | YES   | NO    |
| 6. Is line 4 at least \$10 million?   | _____ | _____ |
| 7. Is line 4 at least 6 times line 1? | _____ | _____ |

- \*8. Are at least 90 percent of assets located in the U.S.? If not, complete line 9. \_\_\_\_\_
9. Is line 4 at least 6 times line 1? \_\_\_\_\_

[Fill in Alternative II if the criteria of LAC 33:IX.3109.B.8.a.ii are used.]

**ALTERNATIVE II**

1. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_
  2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_
  3. Date of issuance of bond \_\_\_\_\_
  4. Date of maturity of bond \_\_\_\_\_
  - \*5. Tangible net worth \$ \_\_\_\_\_
  - \*6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.) \$ \_\_\_\_\_
- |  |     |    |
|--|-----|----|
|  | YES | NO |
|--|-----|----|
7. Is line 5 at least \$10 million? \_\_\_\_\_
  8. Is line 5 at least 6 times line 1? \_\_\_\_\_
  - \*9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10. \_\_\_\_\_
  10. Is line 6 at least 6 times line 1? \_\_\_\_\_

[Fill in Part B if you are using the financial test to demonstrate assurance only for closure and/or post-closure care.]

**PART B. CLOSURE AND/OR POST CLOSURE**

[Fill in Alternative I if the criteria of LAC 33:IX.3109.B.8.a.i are used.]

**ALTERNATIVE I**

1. Sum of current closure and/or post-closure estimate (total all cost estimates shown above) \$ \_\_\_\_\_
  - \*2. Tangible net worth \$ \_\_\_\_\_
  - \*3. Net worth \$ \_\_\_\_\_
  - \*4. Current Assets \$ \_\_\_\_\_
  - \*5. Current liabilities \$ \_\_\_\_\_
  - \*6. The sum of net income plus depreciation, depletion, and amortization \$ \_\_\_\_\_
- |  |     |    |
|--|-----|----|
|  | YES | NO |
|--|-----|----|
- \*7. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.) \$ \_\_\_\_\_
  8. Is line 2 at least \$10 million? \_\_\_\_\_
  9. Is line 2 at least 6 times line 1? \_\_\_\_\_
  - \*10. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 11. \_\_\_\_\_
  11. Is line 7 at least 6 times line 1? \_\_\_\_\_

[Fill in Alternative II if the criteria of LAC 33:IX.3109.B.8.a.ii are used.]

**ALTERNATIVE II**

1. Sum of current closure and post-closure cost estimates (total of all cost estimates shown above) \$ \_\_\_\_\_
  2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_
  3. Date of issuance of bond \_\_\_\_\_
  4. Date of maturity of bond \_\_\_\_\_
  - \*5. Tangible net worth (if any portion of the closure and/or post-closure cost estimate is included in "total liabilities" on your firm's financial statement, you may add the amount of that portion to this line) \$ \_\_\_\_\_
  - \*6. Total assets in U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.) \$ \_\_\_\_\_
- |  |     |    |
|--|-----|----|
|  | YES | NO |
|--|-----|----|
7. Is line 5 at least \$10 million? \_\_\_\_\_
  8. Is line 5 at least 6 times line 1? \_\_\_\_\_
  9. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 10. \_\_\_\_\_
  10. Is line 6 at least 6 times line 1? \_\_\_\_\_

[Fill in Part C if you are using the financial test to demonstrate assurance for liability coverage, closure, and/or post-closure care.]

**PART C. LIABILITY COVERAGE, CLOSURE AND/OR POST-CLOSURE**

[Fill in Alternative I if the criteria of LAC 33:IX.3109.B.8.a.i are used.]

**ALTERNATIVE I**

1. Sum of current closure and/or post-closure cost estimates (total of all cost estimates listed above) \$ \_\_\_\_\_
2. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_
3. Sum of lines 1 and 2 \$ \_\_\_\_\_
- \*4. Total liabilities (If any portion of your closure and/or post-closure cost estimates is included in your "total liabilities" in your firm's financial statements, you may deduct that portion from this line and add that amount to lines 5 and 6.) \$ \_\_\_\_\_
- \*5. Tangible net worth \$ \_\_\_\_\_
- \*6. Net worth \$ \_\_\_\_\_
- \*7. Current assets \$ \_\_\_\_\_
- \*8. Current liabilities \$ \_\_\_\_\_
- \*9. The sum of net income plus depreciation, depletion, and amortization \$ \_\_\_\_\_
- \*10. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.) \$ \_\_\_\_\_

- |   | YES   | NO    |
|---|-------|-------|
| 11. Is line 5 at least \$10 million?  | _____ | _____ |
| 12. Is line 5 at least 6 times line 3?  | _____ | _____ |
| *13. Are at least 90 percent of assets located in the U.S.? If not, complete line 14. _____ |       |       |
| 14. Is line 10 at least 6 times line 3?   | _____ | _____ |

[Fill in Alternative II if the criteria of LAC 33:IX.3109.B.8.a.ii are used.]

**ALTERNATIVE II**

- |  |          |
|--|----------|
| 1. Sum of current closure and/or post-closure cost estimates (total of all cost estimates listed above)  | \$ _____ |
| 2. Amount of annual aggregate liability coverage to be demonstrated  | \$ _____ |
| 3. Sum of lines 1 and 2  | \$ _____ |
| 4. Current bond rating of most recent issuance of this firm and name of rating service   | _____    |
| 5. Date of issuance of bond  | _____    |
| 6. Date of maturity of bond  | _____    |
| *7. Tangible net worth (If any portion of the closure and/or post-closure cost estimates is included in the "total liabilities" in your firm's financial statements, you may add that portion to this line.) | \$ _____ |
| *8. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)   | \$ _____ |
| YES NO   |          |
| 9. Is line 7 at least \$10 million?  | _____    |
| 10. Is line 7 at least 6 times line 3?   | _____    |
| *11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12.  |          |
| 12. Is line 8 at least 6 times line 3?   | _____    |

(The following is to be completed by all firms providing the financial test)

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:IX.3109.B.8.d.

[Signature of chief financial officer for the firm]  
 [Typed name of chief financial officer]  
 [Title]  
 [Date]

Document 10. Corporate Guarantee

**COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY CORPORATE GUARANTEE FOR LIABILITY COVERAGE, CLOSURE, AND/OR POST-CLOSURE CARE**

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental

Quality, obligee, on behalf of our subsidiary [insert the name of the permit holder or applicant] of [business address].

**Recitals**

(A). The guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B.8.i.

(B). [Subsidiary] is the [insert "permit holder," or "applicant for a permit"] hereinafter referred to as [insert "permit holder" or "applicant"] for the following commercial blender, composter, or mixer of sewage sludge facility covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage, closure, and/or post-closure and the amount of annual aggregate liability coverage, closure, and/or post-closure costs covered by the guarantee]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure and/or post-closure.]

(C). "Closure plans" as used below refers to the plans maintained as required by LAC 33:IX.3107.B.3, for the closure and/or post-closure care of the facility identified in Paragraph (B) above.

(D). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that [insert "permit holder" or "applicant"] fails to perform [insert "closure," "post-closure care," or "closure and post-closure care"] of the above facility in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in LAC 33:IX.3109.B.3, as applicable, in the name of [insert "permit holder" or "applicant"] in the amount of the current closure and/or post-closure estimates as specified in LAC 33:IX.3109.B.

[Fill in Paragraph (E) below if the guarantee is for liability coverage.]

(E). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden and accidental occurrences arising from operations of the facility covered by this guarantee that in the event that [insert "permit holder" or "applicant"] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the coverage limits identified above.

(F). The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the administrative authority and to [insert "permit holder" or "applicant"] that he intends to provide alternative financial assurance as specified in [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"], as applicable, in the name of the [insert "permit holder" or "applicant"]. Within 120 days after the end of such fiscal year, the guarantor shall establish such

financial assurance unless [insert "permit holder" or "applicant"] has done so.

(G). The guarantor agrees to notify the administrative authority, by certified mail, of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(H). The guarantor agrees that within 30 days after being notified by the administrative authority of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of [insert "liability coverage" or "closure and/or post-closure care"] he shall establish alternate financial assurance as specified in [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"], as applicable, in the name of [insert "permit holder" or "applicant"] unless [insert "permit holder" or "applicant"] has done so.

(I). The guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: [if the guarantee is for closure and post-closure, insert "amendment or modification of the closure and/or post-closure care, the extension or reduction of the time of performance of closure and/or post-closure"], or any other modification or alteration of an obligation of the [insert "permit holder" or "applicant"] pursuant to LAC 33:IX.3107.B.3.

(J). The guarantor agrees to remain bound under this guarantee for as long as the [insert "permit holder" or "applicant"] must comply with the applicable financial assurance requirements of [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"] for the above-listed facility, except that guarantor may cancel this guarantee by sending notice by certified mail, to the administrative authority and to the [insert "permit holder" or "applicant"], such cancellation to become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the [insert "permit holder" or "applicant"], as evidenced by the return receipts.

(K). The guarantor agrees that if the [insert "permit holder" or "applicant"] fails to provide alternative financial assurance as specified in [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"], as applicable, and obtain written approval of such assurance from the administrative authority within 60 days after a notice of cancellation by the guarantor is received by the administrative authority from guarantor, guarantor shall provide such alternate financial assurance in the name of the [insert "permit holder" or "applicant"].

(L). The guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by the [insert "permit holder" or "applicant"]. Guarantor expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 33:IX.3109.B.8.i, effective on the date first above written.

Effective date: \_\_\_\_\_

[Name of Guarantor]

[Authorized signature for guarantor]

[Typed name and title of person signing]

Thus sworn and signed before me this [date].

\_\_\_\_\_  
Notary Public

A public hearing will be held on February 25, 2002, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by WP034. Such comments must be received no later than March 4, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of WP034.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Use or Disposal of Sewage Sludge**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

No additional personnel or cost to the agency is expected during the first fiscal year. However, upon assumption of the sewage sludge program from EPA (expected during FY 02-03), it is anticipated that there will be a need to hire one staff member to handle additional requirements that will result from program assumption. Costs will be approximately \$49,586 in FY 02-03 and \$48,816 in FY 03-04. The source of funding to implement this rule is existing permit fees and the EPA 106 grant program.

No significant costs to local governmental units is anticipated since local government is currently required to comply with similar federal and state regulations. In cases where local government would have to switch from surface disposal that is not allowed in the rule, to another use or disposal method allowed in the rule, an additional marginal cost may be incurred.

Local governmental units could potentially each save an average \$1,500 every five years in consultant fees for completion of the Notice of Intent for the EPA General Permit that would be eliminated when the state assumes authority for the Sludge Management Program from EPA. Elimination of this cost would amount to an approximate combined savings of \$2,700,000 every five years for the approximately 1,800 Publicly Owned Treatment Works (POTWs) facilities that produce sewage sludge in the state.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Permit fees are presently already in place, therefore, there is no anticipated increase in agency self-generated funds other than from new sources which may come under permitting requirements. However, an estimate of these revenues would be difficult to calculate due to an uncertainty of the number of new sources which may begin operation after promulgation of the rule. After Sewage Sludge Program assumption from EPA, it is anticipated that the EPA 106 grant will provide a 40 percent match for personnel salary costs. This accounts for approximately \$18,294 in federal funds for FY 02-03 and \$19,026 in FY 03-04.

Local government sewer user fees, designated sewer user property taxes, or other taxes may increase for some facilities if they are required to change from their present sewage sludge surface disposal practice to some other form of use or disposal. Three POTWs have definitely been identified as falling in this category. All three are already looking at alternatives.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is the potential for an increase in the demand for consultants who specialize in soils and/or sewage sludge use or disposal and also for private land appliers of sewage sludge. However, an exact impact on receipts and/or income would be difficult to quantify since no information is readily available to determine the number of facilities that might convert from one method of disposal to land application or incineration. There may also be an increase in the number of private land appliers of sewage sludge that, if realized, would increase the number of jobs and small businesses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No significant effect on competition and employment is anticipated from this proposed rule since all facilities will be impacted equally.

James H. Brent, Ph.D.  
Assistant Secretary  
0201#045

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

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

The Louisiana State Racing Commission hereby gives notice that it intends to amend LAC 35:I.1797, "Penalty Guidelines," in order to update the penalties for administering Class IV and V drugs/substances to race horses.

This proposed rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

**Title 35  
HORSE RACING**

**Part I. General Provisions**

**Chapter 17. Corrupt and Prohibited Practices  
§1797. Penalty Guidelines**

A. - B.3. ...

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:

The domicile office of the Louisiana State Racing Commission is open from 8:30 a.m. to 5 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or C.A. Rieger, assistant director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed rule through February 11, 2002, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Corrupt and Prohibited  
Practices C Penalty Guidelines**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated costs or savings to state or local governmental units associated with these rules, other than those one-time costs directly associated with the publication of these rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is estimated to be no effect on revenue collections of local governmental units associated with this proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This action benefits the industry in general by assuring fairness among horsemen by using a just, updated penalty system for violators of rules for unacceptable drug/substance use on horses in racing, particularly those drugs/substances in Class IV and V.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

There is no estimated effect on competition and employment as a result of the proposed rule.

Charles A Gardiner III  
Executive Director  
0201#078

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Office of State Uniform Payroll**

Direct Deposit (LAC 4:III.Chapter 3 and 5)

In accordance with R.S. 39:247 and R.S. 42:455, notwithstanding any other provision of law to the contrary, the Office of the Governor, Division of Administration, Office of State Uniform Payroll is proposing to adopt the following rule regarding direct deposit of employee pay and direct deposit of vendor payments and electronic receipt of supporting data, respectively. The purpose of the rule is to set requirements for employees and vendors paid through the statewide ISIS Human Resource System for direct deposit of employee pay and for direct deposit of vendor payments and electronic receipt of supporting data, to establish waivers (exceptions to the rule), and to establish guidelines for enforcement of the rule. Electronic processing of employee pay and the electronic processing of vendor payments and supporting data is the direction that the private sector, Federal Government, and many states are moving towards. Direct deposit is a fast, safe, and proven service that is provided at minimal or no cost to employees and vendors.

**Title 4**

**ADMINISTRATION**

**Part III. Payroll**

**Chapter 3. Direct Deposit of Employee Pay**

**§301. Definitions**

**Agency** Any one of the 20 major departments of state government or any subdivision thereof.

**Automated Clearing House (ACH)** the network, operated by the Federal Reserve Bank, which establishes procedures and guidelines regarding electronic transfer of funds.

**Compensation** any form of monetary pay issued to an employee for services performed.

**Condition of Employment** policy requiring a particular requirement to be met in order for offer of employment to be given.

**Department Head** the person responsible for the operation of a department.

**Direct Deposit** the automatic deposit, through electronic transfer of funds, of employees' compensation into a checking or savings account at a bank, savings and loan, or credit union of their choice.

**Direct Deposit Enrollment Authorization Form** the standard form developed by the Division of Administration, Office of State Uniform Payroll, completed by the employee, giving the employing agency authority to process employee specific direct deposit bank account information in the ISIS Human Resource System for the electronic transfer of funds.

**Division of Administration (DOA)** the Louisiana State Agency under the Executive Department which provides

centralized administrative and support services to state agencies as a whole by developing, promoting, and implementing executive policies and legislative mandates.

**Electronic Processing** method of automatically transferring data/funds through computers rather than through hard copy.

**Employee Administration** the section within an agency responsible for payroll and human resources.

**Employing Agency** the agency for which an employee is currently working.

**Financial Institution** a bank, savings and loan, or credit union who is established as a receiver of ACH payments.

**Geographical Barrier** an obstacle based on the physical location of an employee in relation to the physical location of a financial institution that would impede an employee's ability to obtain funds from the financial institution.

**ISIS Human Resource System** the integrated statewide information system administered by the Division of Administration, Office of State Uniform Payroll to provide uniform payroll services to state agencies.

**Net Pay** the amount of compensation due to the employee after taking an employees wages and compensation earned and deducting all voluntary and involuntary deductions.

**Office of State Uniform Payroll (OSUP)** the section within the Division of Administration primarily responsible for the DOA statewide payroll system and administration of the rules governing state employee payroll deductions.

**Physical/Mental Disability Barrier** an obstacle based on a physical or mental impairment that would impede an employee's ability to obtain an account at a financial institution or impede an employee's ability to obtain funds from a financial institution.

**Primary Bank Account** an employee's checking or savings account at a financial institution to which net pay is deposited.

**Prospective Employee** a person to whom an agency wishes to issue an offer of employment.

**Representative** a person appointed by the Department Head to handle the operation of the department.

**Secondary Bank Account** an employee's checking or savings account at a financial institution to which a fixed dollar amount or percentage of net pay is deposited.

**Suspense Holding Account** a bank account established and maintained by the Division of Administration to which funds for employees not complying with this rule will be deposited until such time employee forwards direct deposit enrollment authorization form to the Employee Administration section of the employing agency.

**Third Party Account** bank account established for a person other than the employee.

**Wage** payment for services to an employee.

**Waiver** authorization by the Division of Administration, Office of State Uniform Payroll, for an exception to the enforcement of this rule.

**Waiver Form** the standard form developed by the Division of Administration, Office of State Uniform Payroll, completed by the employee to request a waiver from the requirement of this rule.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

### **§303. Direct Deposit of Employee Pay**

A. Beginning July 1, 2002, all employees paid through the ISIS Human Resource System are required to receive wage and compensation payments via direct deposit through the Automated Clearing House (ACH). Employees must complete an approved direct deposit enrollment authorization form to establish direct deposit of net pay to the employee's primary bank account at an approved financial institution. Employees may choose to send, via direct deposit, a fixed dollar amount or a percentage of net pay to a secondary bank account by completing an approved direct deposit enrollment authorization form for a secondary account. These forms can be obtained from the Employee Administration office of the employing agency. Completed forms must be forwarded to the Employee Administration office of the employing agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

### **§305. Direct Deposit of Employee Pay to a Third Party's Account**

A. Direct deposit of employee pay cannot be set up to go to a third party's account. This includes any account where the employee is not named on the account. Exceptions may be made by the employing agency for deposits to a dependent's account or to the account of a parent/guardian, when the employee is a dependent of the parent/guardian.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

### **§307. Condition of Employment**

A. Direct deposit of pay must be considered a condition of employment, and agencies shall not submit job offers to prospective employees who are not willing to receive their wage and compensation payments via direct deposit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

### **§309. Request for Direct Deposit Waiver**

A. Employees may request a waiver of the requirement for direct deposit by completing and submitting to the Employee Administration office of the employing agency a request for direct deposit waiver on an approved waiver form. The approved form can be obtained from the Employee Administration office of the employing agency. The Employee Administration Office is required to submit all requests for waivers to the Department Head or Representative. The Department Head or Representative must approve or deny the waiver based on reasonableness of the request. Approved waivers must be submitted to the Office of State Uniform Payroll for final approval/denial. The Office of State Uniform Payroll will approve, or deny, the request for waiver and return the form to the agency who must then notify the employee of the status of the request for waiver. The agency must maintain a copy of the waiver form

with the employee's records with a notation as to when the employee was notified of the waiver status. Waivers may be approved for geographical barriers, physical/mental disability barrier, or inability to establish an account at any financial institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

### **§311. Enforcement of Rule**

A. Checks will not be produced for employees who have not complied with the provisions of this rule. Wage and compensation payments will be suspended and placed in a suspense holding account until such time that employee completes an approved direct deposit enrollment authorization form and forwards said form to the Employee Administration office of the employing agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

### **§313. Department/Agency Responsibility**

A. Departments/Agencies are responsible for incorporating within the hiring process notification of direct deposit as a condition of employment, enforcing compliance with this rule, reviewing and approving/denying employee requests for waivers, forwarding approved waivers to the Office of State Uniform Payroll for final approval/denial of waivers, notifying employees of the final decision on the waivers, maintaining record of waivers, reporting to the Commissioner of Administration any employees not complying with this rule, and withholding job offers to prospective employees failing to comply with this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

## **Chapter 5. Direct Deposit of Vendor Payments and Electronic Receipt of Supporting Data**

### **§501. Definitions**

*Child Support* C involuntary employee deduction ordered by a court for payment for support of a child.

*Direct Deposit* C the automatic deposit, through electronic transfer of funds, of vendor pay into a checking or savings account at a bank, savings and loan, or credit union of their choice.

*Direct Deposit Enrollment Authorization Form* C the standard form developed by the Division of Administration, Office of State Uniform Payroll, completed by the vendor, giving the Division Of Administration, Office of State Uniform Payroll authority to process vendor specific direct deposit bank account information in the ISIS Human Resource System for the electronic transfer of funds.

*Director* C the leader responsible for the operation of the Office of State Uniform Payroll.

*Division of Administration (DOA)* C the Louisiana State Agency under the Executive Department which provides centralized administrative and support services to state agencies as a whole by developing, promoting, and implementing executive policies and legislative mandates.

*Electronic-Method* of automatically transferring data/funds through computers rather than through hard copy.

*Financial Institution*Ca bank, savings and loan, or credit union who is established as a receiver of ACH payments.

*Garnishment*-Involuntary employee deduction ordered by a court for payment to a creditor.

*Involuntary Payroll Deduction*Cany reduction of net pay which is required by federal or state statute, or by court ordered action.

*ISIS Human Resource System*Cthe integrated statewide information system administered by the Division of Administration, Office of State Uniform Payroll to provide uniform payroll services to state agencies.

*Levy*Cinvoluntary employee deduction ordered by the court for payment of unpaid federal and/or state taxes.

*Office of State Uniform Payroll (OSUP)*Cthe section within the Division of Administration primarily responsible for the DOA statewide payroll system and administration of the rules governing state employee payroll deductions.

*Payment Processing Costs*Ccosts associated with establishing bank accounts and receipt of funds and data electronically, including internal costs and financial institution costs.

*Prospective Vendor*Cany company, corporation, or organization which has submitted an application to be approved as a vendor for state payroll deduction or a vendor which has submitted an application for approval of an additional product or a change to an existing product.

*Supporting Data*Cinformation to support the electronic payment, including employees' amounts and other related data.

*Suspense Account*Ca bank account established and maintained by the Division of Administration to which funds for vendors not complying with this rule will be deposited until such time vendor forwards direct deposit enrollment authorization form to the Division of Administration, Office of State Uniform Payroll.

*Undue Hardship*Can unwanted burden placed on a vendor as a result of receiving payment and supporting data electronically.

*Vendor*Cany company, corporation, or organization approved to participate in payroll deduction through the ISIS Human Resource System.

*Vendor Payment*Cpayment to vendor for voluntary and involuntary employee payroll deductions with the vendor through the ISIS Human Resource System.

*Voluntary Payroll Deduction*Cany reduction of net pay made under written authority of an employee, which is not required by federal or state statute, or by court ordered action and which the employee is free to accept or decline.

*Waiver*CAuthorization by the Division of Administration, Office of State Uniform Payroll, for an exception to the enforcement of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

### **§503. Direct Deposit of Vendor Payments and Electronic Receipt of Supporting Data**

A. Effective July 1, 2002, all vendors having either voluntary or involuntary payroll deductions through the ISIS Human Resource System must accept payments for

deductions via direct deposit or other approved electronic means and must accept supporting data via an approved electronic means. Vendors must complete an approved direct deposit enrollment authorization form and forward said form to the Office of State Uniform Payroll to establish direct deposit of vendor payments to the vendor's bank account at an approved financial institution. Approved direct deposit enrollment forms can be obtained from the Office of State Uniform Payroll. Prior to a new vendor being approved and established in the ISIS Human Resource System, the Office of State Uniform Payroll must receive a completed approved direct deposit enrollment authorization form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

### **§505. Request for Direct Deposit Waiver**

A. Vendors may request a waiver of this rule by submitting in writing a formal request to the Director of the Office of State Uniform Payroll. Upon receipt of formal request, the Office of State Uniform Payroll will approve or deny the request for waiver and notify the vendor in writing within 15 days of receipt of request for waiver. Waivers may be approved if the vendor can prove that use of direct deposit and/or electronic receipt of supporting data will cause an undue hardship or will significantly increase payment processing costs.

B. Vendors receiving payments for garnishment, child support, and levies are exempt from the requirements of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

### **§507. Enforcement of Rule**

A. Checks will not be produced for vendors who do not comply to the provisions of this rule. Vendor payments will be suspended and held in a suspense account until such time that vendor completes an approved direct deposit enrollment authorization form and forwards said form to the Office of State Uniform Payroll.

B. Failure to adhere to this rule will result in termination of payroll deduction privileges.

C. Current and prospective vendors requesting to receive new payroll deductions through the Payroll Deduction Rule (LAC 4:III.Chapter 1) will be denied acceptance for refusal to receive payments via direct deposit or other approved electronic means and receive supporting data via an approved electronic means.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

### **Family Impact Statement**

The proposed rule will have an effect on family earnings and family budget for those who do not comply with the requirements of the rule, because payments will be suspended until the employee completes a direct deposit enrollment authorization form and forwards to the Employee Administration office of the employing agency. Employees may also incur minimal financial institution fees for their

bank account of choice. There are no other known impacts on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments to the Director of the Office of State Uniform Payroll, P.O. Box 94095, Baton Rouge, LA 70804-9095. All comments must be received no later than 5:00 p.m., March 20, 2002.

Mark Drennen  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Direct Deposit**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Issuing payroll checks bears the cost of purchasing, processing, and distributing checks. The use of direct deposit could result in cost savings to the state by reducing such operating and processing costs, providing increased control over funds, as well as greatly reduced expense for reconciliation of payroll accounts. If there is 100% compliance with this rule, there will be an estimated \$58,000/year savings to the state, within the Office of State Uniform Payroll alone. The positions currently handling this processing will be retained to handle other tasks for the office.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There should be no effect on revenue collections for state or local governments.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

By complying to this rule, employees and vendors may have to pay fees ranging from \$0 - \$30 per month, depending on what fees are imposed by the financial institution of their choice. There are a number of financial institutions that can be utilized who have minimal or no fees.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule requires agencies to set a policy requiring direct deposit to be a condition of employment. Therefore, prospective employees must enroll in direct deposit in order to be given an offer of employment.

Whitman J. Kling, Jr.      Robert E. Hosse  
Deputy Undersecretary      General Government Section Director  
0201#035                      Legislative Fiscal Office

**NOTICE OF INTENT**

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

Home and Community Based Services Waiver Program  
Adult Day Health Care Waiver  
Request for Services Registry

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This

proposed rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implemented the Adult Day Health Care Waiver Program effective January 6, 1985. The Adult Day Health Care Waiver was designed to meet the individual needs of aged and functionally impaired adults by providing a variety of health, social and related support services in a protective setting. Candidates who meet all of the eligibility criteria are ranked in the order of the date on record when the candidate initially requested to be evaluated for waiver eligibility and placed on waiting lists maintained by the participating Adult Day Health Care centers. In order to facilitate the efficient management of the waiver waiting list, the department adopted an emergency rule to transfer responsibility for the Adult Day Health Care Waiver waiting lists to the Bureau of Community Supports and Services and establish a single state-wide request for services registry (*Louisiana Register*, volume 27, number 12). The department now proposes to adopt a Rule to continue the provisions contained in the December 3, 2001 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed rule will have a positive impact on the family as it will enhance the efficiency of the management of the registry and facilitate the allocation of waiver slots.

**Proposed Rule**

The Department of Health and Hospitals transfers responsibility for the waiting list for the Adult Day Health Care (ADHC) Waiver to the Bureau of Community Supports and Services (BCSS) and consolidates the approximately twenty-seven waiting lists into a centralized state-wide request for services registry that is maintained by region and arranged in order of the date of the initial request. Persons who wish to be added to the request for services registry shall contact a toll-free telephone number maintained by BCSS. Those persons on the existing waiting lists prior to the date of the transfer of responsibility to BCSS shall remain on the request for services registry in the order of the date on record when the candidate initially requested waiver services. When a candidate is listed on more than one waiting list, the earliest date on record shall be considered the date of initial request.

Interested persons may submit written comments to: Barbara Dodge, Bureau of Community Supports and Services, 446 North Twelfth Street, Baton Rouge, LA 70802-4613. She is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Tuesday, February 26, 2002 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Home and Community Based Services  
Waiver ProgramC Adult Day Health Care  
WaiverC Request for Services Registry**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2001-02, 2002-03, and 2003-04. It is anticipated that \$120 (\$60 SGF and \$60 FED) will be expended in SFY 2001-02 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not impact federal revenue collections.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

It is anticipated that implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

There is no known effect on competition or employment. This proposed rule will transfer responsibility for the Adult Day Health Care (ADHC) Waiver waiting lists (approximately 27) to the Bureau of Community Supports and Services and establish a single statewide request for services registry.

Ben A. Bearden  
Director  
0201#051

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Home and Community Based Services Waiver Program  
Elderly and Disabled Adult Waiver  
Request for Services Registry

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt the following Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed Rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in August 1993 establishing the Home Care for the Elderly Waiver Program to provide community based services to individuals who are age 65 and older and meet the medical certification and financial eligibility requirements for nursing facility care *(Louisiana Register,*

volume 19, number 8). The August 1993 rule was amended by a rule adopted in January 1998 to: 1) redefine the target population served by the Home Care for the Elderly waiver and rename the waiver as the Elderly and Disabled Adult (EDA) waiver; 2) establish an average cost per day limit for each participant of the waiver; 3) establish and define new services; 4) establish methodology for the assignment of slots; and 5) clarify admission and discharge criteria, mandatory reporting requirements and the reimbursement requirement for the prior approval of the plan of care *(Louisiana Register,* volume 24, number 1).

The waiting lists for the EDA waiver are currently maintained by 64 local Council on Aging agencies. In order to facilitate the efficient management of the waiver waiting list, the department adopted an emergency rule to transfer responsibility for the Elderly and Disabled Adult waiver waiting list to the Bureau of Community Supports and Services and establish a single state-wide request for services registry *(Louisiana Register,* volume 27, number 12). The department now proposes to adopt a Rule to continue the provisions contained in the December 3, 2001 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. It is anticipated that this proposed rule will have a positive impact on the family as it will enhance the efficiency of the management of the registry and facilitate the allocation of waiver slots.

**Proposed Rule**

The Department of Health and Hospitals amends the January 1998 Rule to incorporate the transfer of responsibility for the waiting list for the Elderly and Disabled Adult waiver to the Bureau of Community Supports and Services (BCSS) and consolidate the 64 waiting lists into a centralized state-wide request for services registry arranged in order of the date of the initial request. Persons who wish to be placed on the request for services registry shall contact a toll-free telephone number maintained by BCSS. Those persons on the waiting lists prior to the date of the transfer of responsibility to BCSS shall remain on the request for services registry in the order of the date on record when the candidate initially requested to be evaluated for waiver services.

Interested persons may submit written comments to: Barbara Dodge, Bureau of Community Supports and Services, 446 North Twelfth Street, Baton Rouge, LA 70802-4613. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, February 26, 2002 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Home and Community Based Services  
Waiver ProgramC Elderly and Disabled Adult  
WaiverC Request for Services Registry**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2001-02, 2002-03, and 2003-04. It is anticipated that \$160 (\$80 SGF and \$80 FED) will be expended in SFY 2001-02 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not impact federal revenue collections.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

It is anticipated that implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

There is no known effect on competition or employment. This proposed rule will transfer responsibility for the Elderly and Disabled Adult (EDA) waiver waiting lists (64) to the Bureau of Community Supports and Services and establish a single statewide request for services registry.

Ben A. Bearden  
Director  
0201#052

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Home and Community Based Services Waiver Program  
Personal Care Attendant Waiver  
Request for Services Registry**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in February 1993 to implement a home and community services waiver to provide Personal Care Attendant (PCA) services to individuals who have lost sensory or motor functions and require assistance with personal care needs, ambulation and other related services. Candidates who meet all of the eligibility criteria are ranked by degree of need using the Degree of Need formula. Waiver slots in the three designated service areas are then filled in order of the highest scores as determined by the formula (*Louisiana Register, Volume 19, Number 2*).

The three PCA waiver waiting lists are currently maintained by the regional PCA waiver provider agencies. In order to facilitate the efficient management of the waiver waiting list, the department adopted an Emergency Rule to transfer responsibility for the Personal Care Attendant (PCA) Waiver waiting list to the Bureau of Community Supports and Services and establish a single state-wide request for services registry (*Louisiana Register, volume 27, number 12*). The department now proposes to adopt a rule to continue the provisions contained in the December 3, 2001 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. It is anticipated that this proposed rule will have a positive impact on the family as it will enhance the efficiency of the management of the registry and facilitate the allocation of waiver slots.

**Proposed Rule**

The Department of Health and Hospitals transfers responsibility for the Personal Care Attendant (PCA) waiver waiting list to the Bureau of Community Supports and Services (BCSS) and consolidates the three waiting lists into a state-wide request for services registry arranged by degree of need and the date of the initial request. Persons who wish to be placed on the request for services registry shall contact a toll-free telephone number maintained by BCSS. Those persons on the existing waiting lists prior to the date of the transfer of responsibility to BCSS shall remain on the request for services registry in the order of degree of need score and the date on record when the candidate initially requested waiver services.

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, 446 North Twelfth Street, Baton Rouge, LA 70802-4613. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule is scheduled for Tuesday, February 26, 2002 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Home and Community Based Services  
Waiver ProgramC Personal Care Attendant  
WaiverC Request for Services Registry**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2001-02, 2002-03, and 2003-04. It is anticipated that \$160 (\$80 SGF and \$80 FED) will be expended in SFY 2001-02 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule will not impact federal revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition or employment. This proposed rule will transfer responsibility for the Personal Care Attendant (PCA) Waiver waiting lists (3) to the Bureau of Community Supports and Services and establish a single statewide request for services registry.

Ben A. Bearden  
Director  
0201#055

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Medicaid Eligibility  
Breast and Cervical Cancer Treatment Program**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Breast and Cervical Cancer Prevention and Treatment Act of 2000 (BCCPTA) amended Title XIX of the Social Security Act to give states enhanced matching funds to provide Medicaid eligibility to a new group of individuals previously not eligible under the program. The new option allows states to provide full Medicaid benefits to uninsured women under age 65 who are identified through the Centers for Disease Control and Prevention's National Breast and Cervical Cancer Early Detection Program and are in need of treatment for breast or cervical cancer, including pre-cancerous conditions and early stage cancer.

In compliance with the Breast and Cervical Cancer Prevention and Treatment Act of 2000, the bureau adopted an Emergency Rule to establish an optional eligibility group to provide Medicaid eligibility to women who are in need of treatment for breast or cervical cancer, including pre-cancerous conditions and early stage cancer (*Louisiana Register*, volume 27, number 12). The bureau now proposes to adopt a Rule to continue the provisions contained in the January 1, 2002 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972. The proposed Rule will provide access to medical services for women who are in need of treatment for breast

or cervical cancer and who would otherwise not be able to receive these services.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes an optional eligibility group to provide Medicaid eligibility to women who are in need of treatment for breast or cervical cancer, including pre-cancerous conditions and early stage cancer.

**Eligibility Criteria**

Regular income and resource criteria are not applicable for Medicaid benefits under this optional eligibility group. However, the applicant's income must be under 250 percent of the federal poverty level in order to qualify for screening under the Centers for Disease Control and Prevention's Breast and Cervical Cancer Early Detection Program.

Women must meet all of the following criteria in order to be considered for the optional eligibility group:

1. the woman must have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention's Breast and Cervical Cancer Early Detection Program and found to need treatment for either breast or cervical cancer, including pre-cancerous conditions and early stage cancer; and
2. she must be uninsured (or if insured, has coverage that does not include treatment of breast or cervical cancer) and ineligible under any of the mandatory Medicaid eligibility groups; and
3. she must be under age 65.

**Coverage**

A woman who becomes eligible under this new optional category is entitled to full Medicaid coverage. Coverage is not limited to treatment of breast and cervical cancer.

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

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, February 26, 2002 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Medicaid Eligibility Breast and  
Cervical Cancer Treatment Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately \$344,863 for SFY 2001-02, \$846,141 for SFY 2002-03, and \$1,028,404 for SFY 2003-04. It is anticipated that \$160 (\$80

SGF and \$80 FED) will be expended in SFY 2001-2002 for the state's administrative expense for promulgation of this proposed rule and the final Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$1,316,904 for SFY 2001-02, \$3,328,209 for SFY 2002-03, and \$4,045,124 for SFY 2003-04.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule will establish an optional eligibility group to provide full Medicaid benefits to uninsured women under age 65 (approximately 150-200 per year) who are identified through the Centers for Disease Control and Prevention's National Breast and Cervical Cancer Early Detection Program and are in need of treatment for breast or cervical cancer, including pre-cancerous conditions and early stage cancer. Implementation of this proposed rule will increase payments to providers of Medicaid services by approximately \$1,661,607 for SFY 2001-02, \$4,174,350 for SFY 2002-03, and \$5,073,528 for SFY 2003-04.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0201#053

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

#### Medicaid Eligibility Incurred Medical Expenses

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed Rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule promulgating the Medicaid Eligibility Manual in its entirety by reference in May of 1996 (*Louisiana Register*, volume 22, number 5). Section I of the Medicaid Eligibility Manual explains the eligibility factors used to determine Medicaid eligibility, including consideration of medical expenses incurred by long term care facility residents as allowable deductions for the purpose of determining patient liability. In compliance with a recent clarification of federal regulations, the bureau has determined it is necessary to establish criteria governing allowable and non-allowable deductions for medical expenses incurred by long term care facility residents. Therefore, the bureau proposes to adopt the following rule to amend the provisions of the May 20, 1996 Rule governing deductions for incurred medical expenses that may be considered in the determination of patient liability.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, and autonomy as described in R.S. 49:972.

#### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the May 20, 1996 Rule governing the treatment of medical expenses incurred by long term care facility residents in the determination of patient liability. Deductions for incurred medical expenses must be budgeted, just as income is budgeted, in the month that it is incurred.

#### Criteria for Allowable Deductions

The following criteria apply to all incurred medical expenses.

1. The deduction must be for an expense incurred by a long term care facility resident who is or was eligible for Medicaid vendor payment to the long term care facility during the month the expense was incurred.

2. Each deduction must be for a service or item prescribed by a medical professional (e.g., a physician, a dentist, optometrist, etc.) as medically necessary, and approved by the attending physician to be included as part of the facility's plan of care for the resident.

3. Documentation and receipts for the medical expenses shall contain the name of the recipient, the date of the purchase and itemization of the purchase.

#### Non-Allowable Deductions

Deductions shall not be allowed for the following incurred medical expenses:

1. medical expenses incurred during a month in which the individual was not a resident of a long term care facility and not eligible for vendor payment to a facility;

2. prescription drugs not covered under the Medicaid Program, unless the prescribing physician has been notified that the drug is not covered by the Medicaid Program and has stated that an equivalent alternative that is covered cannot be prescribed;

3. expenses which are payable under Medicaid, except when documentation is presented to verify that the expense was denied by Medicaid due to service limitations;

4. expenses for services, equipment and supplies denied by Medicare or Medicaid as not medically necessary;

5. expenses for services, equipment or supplies that require prior authorization for Medicaid payment. Requests must be submitted to the Prior Authorization Unit for consideration;

6. expenses for services, equipment or supplies provided as part of the long term care facility reimbursement rate (i.e., personal care needs, medical supplies, transportation, etc.);

7. expenses for cosmetics and over-the-counter skin care products;

8. expenses for supplies purchased for the convenience of the long term care facility or family (i.e., diapers);

9. taxes on expenditures;

10. cosmetic or elective procedures (i.e., face lifts or liposuction); or

11. expenses for reserving or holding a nursing facility bed when the resident's absence has exceeded Medicaid's

bed-hold limit and all hospital or home leave days have been exhausted.

**Deduction Limitations**

The following deduction limitations apply to those medically necessary incurred expenses cited.

1. Dental Services. Deductions for dental services shall be limited to the maximum allowed under the established fee schedule that will be updated annually. Denture and denture repairs are subject to the service limits of the Adult Denture Program, unless exceptional medical necessity can be demonstrated.

2. Eyeglasses. Deductions for eyeglasses not otherwise covered by the Medicaid Program are limited to \$150 annually.

3. Hearing Aids. A one-time deduction not to exceed \$600 is allowed.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, February 26, 2002 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Medicaid EligibilityC Incurred Medical Expenses**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately \$217,987 for SFY 2001-02, \$1,145,992 for SFY 2002-03, and \$1,180,372 for SFY 2003-04. It is anticipated that \$200 (\$100 SGF and \$100 FED) will be expended in SFY 2001-2002 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$517,324 for SFY 2001-02, \$2,720,379 for SFY 2002-03, and \$2,801,990 for SFY 2003-04.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Deductions for medical expenses incurred by long term care facility residents will be considered as allowable for the purpose of determining patient liability relative to the total amount to be paid to the long term care facility. Implementation of this proposed rule will increase expenditures in the long term care program by approximately \$735,111 for SFY 2001-02, \$3,866,371 for SFY 2002-03, and \$3,982,362 for SFY 2003-04.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0201#054

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

**Regulation 77C Medical Necessity Review Organizations  
(LAC 37:XIII.Chapter 62)**

In accordance with the provisions of R.S. 49:953 of the Administrative Procedure Act and R.S. 22:3090, the Department of Insurance is proposing to adopt the following Rule regarding standards for determining the necessity of medical care or services recommended by health care providers. This rule is necessary to establish reasonable requirements for limiting covered services included in a policy or contract of insurance coverage that do not misrepresent the benefits, advantages, conditions, or terms of the policy issued, or to be issued, based on medical necessity determinations. This rule establishes the statutory requirements for health insurance issuers who seek to make such limitations in products sold in this state and establish the standards for Medical Necessity Review Organizations seeking licensure under Title 22 of the Louisiana Revised Statutes of 1950.

**Title 37  
INSURANCE**

**Part XIII. Regulations**

**Chapter 62. Regulation 77C Medical Necessity Review Determinations**

**§6201. Purpose**

A. The purpose of this regulation is to enforce the statutory requirements of Title 22 of the Louisiana Revised Statutes of 1950 that require health insurance issuers who seek to establish exception criteria or limitations on covered benefits that are otherwise offered and payable under a policy or certificate of coverage sold in this state, by requiring a medical necessity determination to be made by the health insurance issuer. The statutory requirements also apply to any health benefit plan that establishes exception criteria or limitations on covered benefits that are otherwise offered and payable under a non-federal government benefit plan. Additionally, the statute establishes a process for Medical Necessity Review Organizations to qualify for state licensure and Independent Review Organizations to become certified by the Department of Insurance. The statutory requirements establish the intent of the legislature to assure licensed health insurance issuers and non-federal government benefit plans meet minimum quality standards and do not utilize any requirement that would act to impinge on the ability of insureds or government employees to receive appropriate medical advice and/or treatment from a health care professional. This Regulation has no effect on the statutory requirements of R.S. 22:657. Emergency medical conditions as defined in R.S. 22:657 shall be covered and payable as provided therein.

This regulation implements the statutory requirements of R.S. §§22:2021, and Chapter 7 of Title 22 of the Louisiana Revised Statutes regarding the use of medical necessity to limit stated benefits in a fully insured health policy or HMO certificate.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

### §6203. Definitions

**Adverse Determination**Ca determination that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and denied, reduced, or terminated by a reviewer based on medical necessity, appropriateness, health care setting, level of care, or effectiveness.

**Ambulatory Review**Ca review of health care services performed or provided in an outpatient setting.

**Appropriate Medical Information**Call outpatient and inpatient medical records that are pertinent to the evaluation and management of the covered person and that permit the Medical Necessity Review Organization to determine compliance with the applicable clinical review criteria. In the review of coverage for particular services, these records may include, but are not necessarily limited to, one or more of the following portions of the covered person's medical records as they relate directly to the services under review for medical necessity: admission history and physical examination report, physician's orders, progress notes, nursing notes, operative reports, anesthesia records, hospital discharge summary, laboratory and pathology reports, radiology or other imaging reports, consultation reports, emergency room records, and medication records.

**Authorized Representative**Ca person to whom a covered person has given written consent to represent the covered person in an internal or external review of an adverse determination of medical necessity. **Authorized Representative** may include the covered person's treating provider, if the covered person appoints the provider as his authorized representative and the provider agrees and waives in writing, any right to payment from the covered person other than any applicable copayment or coinsurance amount. In the event that the service is determined not to be medically necessary by the MNRO/IRO, and the covered person or his authorized representative thereafter requests the services, nothing shall prohibit the provider from charging the provider's usual and customary charges for all MNRO/IRO determined non-medically necessary services provided when such requests are in writing.

**Case Management**Ca coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions.

**Certification or Certify**Ca determination by a reviewer regarding coverage of an admission, continued stay, or other health care service for the purpose of determining medical necessity, appropriateness of the setting, or level of care.

**Clinical Peer**Ca physician or other health care professional who holds an unrestricted license in the same or an appropriate specialty that typically manages the medical condition, procedure, or treatment under review. Non-physician practitioners, including but not limited to nurses,

speech and language therapists, occupational therapists, physical therapists, and clinical social workers, are not considered to be clinical peers and may not make adverse determinations of proposed actions of physicians (medical doctors shall be clinical peers of medical doctors, etc.).

**Clinical Review Criteria**the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a reviewer to determine the necessity and appropriateness of covered health care services.

**Commissioner**the commissioner of insurance.

**Concurrent Review**Ca review of medical necessity, appropriateness of care, or level of care conducted during a patient's stay or course of treatment.

**Covered Benefits or Benefits**those health care services to which a covered person is entitled under the terms of a health benefit plan.

**Covered Person**Ca policyholder, subscriber, enrollee, or other individual covered under a policy of health insurance or HMO subscriber agreement.

**Discharge Planning**the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility.

**Disclose**to release, transfer, or otherwise divulge protected health information to any individual, entity, or person other than the individual who is the subject of the protected health information.

**Emergency Medical Condition**Ca medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in any of the following:

1. placing the health of the individual in serious jeopardy;
2. with respect to a pregnant woman, placing the health of the woman or her unborn child in serious jeopardy;
3. serious impairment to bodily function; or
4. serious dysfunction of any bodily organ or part.

**Entity**Can individual, person, corporation, partnership, association, joint venture, joint stock company, trust, unincorporated organization, any similar entity, agent, or contractor, or any combination of the foregoing.

**External Review Organization**Can independent review organization that conducts independent external reviews of adverse determinations and final adverse determinations and whose accreditation or certification has been reviewed and approved by the Department of Insurance.

**Facility**Can institution providing health care services or a health care setting, including but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing facilities, inpatient hospice facilities, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic health settings.

**Final Adverse Determination**Can adverse determination that has been upheld by a reviewer at the completion of the medical necessity review organization's internal review process as set forth in this Chapter.

**Health Benefit Plan**group and individual health insurance coverage, coverage provided under a group health

plan, or coverage provided by a nonfederal governmental plan, as those terms are defined in R.S. 22:250.1. *Health Benefit Plan* shall not include a plan providing coverage for excepted benefits as defined in R.S. 22:250.1(3).

*Health Care Professional*Ca physician or other health care practitioner licensed, certified, or registered to perform specified health services consistent with state law.

*Health Care Provider* or *Provider*Ca health care professional, the attending, ordering, or treating physician, or a facility.

*Health Care Services*Cservices for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

*Health Information*Cinformation or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to any of the following:

1. the past, present, or future physical, mental, or behavioral health or condition of a covered person or a member of the covered person's family;
2. the provision of health care services to a covered person; or
3. payment for the provision of health care services to a covered person.

*Health Insurance Coverage*Cbenefits consisting of medical care provided or arranged for directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organization agreement, or health maintenance organization contract offered by a health insurance issuer.

*Health Insurance Issuer*Can insurance company, including a health maintenance organization, as defined and licensed pursuant to Part XII of Chapter 2 of this Title, unless preempted as an employee benefit plan under the Employee Retirement Income Security Act of 1974.

*Medical Necessity Review Organization* or *MNRO*Ca health insurance issuer or other entity licensed or authorized pursuant to this Chapter to make medical necessity determinations for purposes other than the diagnosis and treatment of a medical condition.

*Prospective Review*Ca review conducted prior to an admission or a course of treatment.

*Protected Health Information*Chealth information that either identifies a covered person who is the subject of the information or with respect to which there is a reasonable basis to believe that the information could be used to identify a covered person.

*Retrospective Review*Ca review of medical necessity conducted after services have been provided to a patient, but shall not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

*Second Opinion*Can opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health service to assess the clinical necessity and appropriateness of the initial proposed health service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following

provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

#### **§6205. Authorization or Licensure as an MNRO**

A. No health insurance issuer or health benefit plan, as defined in this chapter, shall act as an MNRO for the purpose of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar medical determinations unless authorized to act as an MNRO by the commissioner as provided in this Chapter. Benefits covered under a health benefit plan sold or in effect in this state on or after January 1, 2001 shall be limited, excluded, or excepted from coverage under any medical necessity determination requirement, appropriateness of care determination, level of care needed, or any other similar determination only when such determination is made by an authorized or licensed MNRO as provided in this Chapter.

B. No entity acting on behalf of or as the agent of a health insurance issuer may act as an MNRO for the purpose of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar determinations unless licensed as an MNRO by the commissioner as provided in this Chapter.

C. Any other entity may apply for and be issued a license under this Chapter to act as an MNRO for the purposes of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar determinations on behalf of a health benefit plan.

D. Any entity licensed or authorized as an MNRO shall be exempt from the requirements of R.S. 40:2721 through 2736. The licensure, authorization, or certification of any entity as an MNRO or independent or external review organization shall be effective beginning on the date of first application for all entities who receive formal written authorization, licensure, or certification by the Commissioner of Insurance. This provision shall remain in effect until December 31, 2001. Any application filed after December 31, 2001 shall become effective upon final approval by the Department of Insurance and not upon date of first application. Therefore any application submitted and filed after December 31, 2001, the licensure, authorization or certification of an entity as an MNRO or independent or external review organization shall be effective upon the date final approval is granted by the Commissioner of Insurance.

E. An integrated health care network or other entity contracting with a health insurance issuer for provision of covered services under a risk sharing arrangement, shall be allowed to make initial adverse medical necessity determinations provided the health insurance issuer remains responsible for provision of internal and external review requirements and has submitted the information required under Paragraph B.5 of Section 6207 for review and approval. In such instances, a covered person's request for an internal or external appeal of an adverse determination shall not require concurrence by a provider reimbursed under a risk sharing arrangement with the health insurance issuer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following

provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6207. Procedure for Application to act as an MNRO**

A. Any applicant for licensure other than a health insurance issuer shall submit an application to the commissioner and pay an initial licensure fee as specified in §6211.D. The application shall be on a form and accompanied by any supporting documentation required by the commissioner and shall be signed and verified by the applicant. The information required by the application shall include:

1. the name of the entity operating as an MNRO and any trade or business names used by that entity in connection with making medical necessity determinations;

2. the names and addresses of every officer and director of the entity operating as an MNRO, as well as the name and address of the corporate officer designated by the MNRO as the corporate representative to receive, review, and resolve all grievances addressed to the MNRO;

3. the name and address of every person owning, directly or indirectly, five percent or more of the entity operating as an MNRO;

4. the exact street and mailing address of the principal place of business where the MNRO will operate and conduct medical necessity review determinations;

5. a general description of the operation of the MNRO, which includes a statement that the MNRO does not engage in the practice of medicine or acts to impinge or encumber the independent medical judgment of treating physicians or health care providers;

6. a description of the MNRO's program that evidences it meets the requirements of this Chapter for making medical necessity determinations and resolving disputes on an internal and external basis. (Such program description shall evidence compliance with requirements of Section 6213 of this Chapter);

7. a sample copy of any contract, absent fees charged, with a health insurance issuer, nonfederal government health benefit plan, or other group health plan for making determinations of medical necessity;

8. for each individual that will be designated to make adverse medical necessity determinations pursuant to this Chapter:

a. a description of the types of determinations that will be made by the individual and the type of license that will be required to support such determinations; and

b. a written policy statement that the individual shall have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character;

c. a written policy statement that the individual will be required to attest that no adverse determination will be made regarding any medical procedure or service outside the scope of such individual's expertise.

B. A health insurance issuer holding a valid certificate of authority to operate in this state may be authorized to act as an MNRO under the requirements of this Chapter following

submission to the commissioner of appropriate documentation for review and approval that shall include, but need not be limited, to the following:

1. the exact street and mailing address of the principal place of business where the MNRO will operate and conduct medical necessity review determinations;

2. a general description of the operation of the MNRO which includes a statement that the MNRO does not engage in the practice of medicine or act to impinge upon or encumber the independent medical judgment of treating physicians or health care providers;

3. a description of the MNRO's program that evidences it meets the requirements of this Chapter for making medical necessity determinations and resolving disputes on an internal and external basis. (Such program description shall evidence compliance with requirements of Section 6213 of this Chapter);

4. a sample copy of any contract, absent fees charged, with another health insurance issuer for making determinations of medical necessity;

5. for each individual that will be designated to make adverse medical necessity determinations pursuant to this Chapter:

a. a description of the types of determinations that will be made by the individual and the type of license that will be required to support such determinations;

b. a written policy statement that the individual shall have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character; and

c. a written policy statement that the individual will be required to attest that no adverse determination will be made regarding any medical procedure or service outside the scope of such individual's expertise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and, 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6211. Expiration and Renewal of License for Entities other than Health Insurance Issuers**

A. Licensure pursuant to this Chapter shall expire two years from the date approved by the commissioner unless the license is renewed for a two-year term as provided in this Section.

B. Before a license expires, it may be renewed for an additional two-year term if the applicant pays a renewal fee as provided in this Section and submits to the commissioner a renewal application on the form that the commissioner requires.

C. The renewal application required by the commissioner shall include, but need not be limited to, the information required for an initial application.

D. The fee for initial licensure and the fee for renewal of licensure shall each be \$1,500.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014 and 3090, to implement and enforce the following

provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6213. Scope and Content of Medical Necessity Determination Process**

A. An MNRO shall implement a written medical necessity determination program that describes all review activities performed for one or more health benefit plans. The program shall include the following:

1. the methodology utilized to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services;
2. data sources and clinical review of criteria used in decision-making. The appropriateness of clinical review criteria shall be fully documented;
3. the process for conducting appeals of adverse determinations including informal reconsiderations;
4. mechanisms to ensure consistent application of review criteria and compatible decisions;
5. data collection processes and analytical methods used in assessing utilization of health care services;
6. provisions for assuring confidentiality of clinical and proprietary information;
7. the organizational structure, including any review panel or committee, quality assurance committee, or other committee that periodically accesses health care review activities and reports to the health benefit plan;
8. the medical director's responsibilities for day-to-day program management;
9. any quality management program utilized by the MNRO.

B. An MNRO shall file with the commissioner an annual summary report of its review program activities that includes a description of any substantive changes that have been implemented since the last annual report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6215. Medical Necessity Review Organization Operational Requirements**

A. An MNRO shall use documented clinical review criteria that are based on sound clinical evidence. Such criteria shall be evaluated at least annually and updated if necessary to assure ongoing efficacy. An MNRO may develop its own clinical review criteria or it may purchase, license or contract for clinical review criteria from qualified vendors. An MNRO shall make available its clinical review criteria upon request to the commissioner who shall be authorized to request affirmation of such criteria from other appropriate state regulatory agencies.

B. An MNRO shall have a medical director who shall be a duly licensed physician. The medical director shall administer the program and oversee all adverse review decisions. Adverse determinations shall be made only by a duly licensed physician or clinical peer. An adverse determination made by an MNRO in the second level review shall become final only when a clinical peer has evaluated and concurred with such adverse determination.

C. An MNRO shall issue determination decisions in a timely manner pursuant to the requirements of this Chapter. At the time of the request for review, an MNRO shall notify the requestor of all documentation required to make a medical review determination. The requestor may include the covered person, an authorized representative, or a provider. In the event that the MNRO determines that additional information is required, it shall notify the requestor by telephone, within one workday of such determination, to request any additional appropriate medical information required. An MNRO shall obtain all information required to make a medical necessity determination, including pertinent clinical information, and shall have a process to ensure that qualified health care professionals performing medical necessity determinations apply clinical review criteria consistently.

D. At least annually, an MNRO shall routinely assess the effectiveness and efficiency of its medical necessity determination program and report any deficiencies or changes to the commissioner. Deficiencies shall include complaint investigations by the department or grievances filed with the MNRO that prompted the MNRO to change procedures or protocols.

E. An MNRO's data systems shall be sufficient to support review program activities and to generate management reports to enable the health insurance issuer or other contractor to monitor its activities.

F. Health insurance issuers who delegate any medical necessity determination functions to an MNRO shall be responsible for oversight, which shall include, but not be limited to, the following:

1. a written description of the MNRO's activities and responsibilities, including reporting requirements;
2. evidence of formal approval of the medical necessity determination program by the health insurance issuer;
3. a process by which the health insurance issuer monitors or evaluates the performance of the MNRO.

G Health insurance issuers who perform medical necessity determinations shall coordinate such program with other medical management activities conducted by the health insurance issuer, such as quality assurance, credentialing, provider contracting, data reporting, grievance procedures, processes for assessing member satisfaction, and risk management.

H. An MNRO shall provide health care providers with access to its review staff by a toll-free number that is operational for any period of time that an authorization, certification, or approval of coverage is required.

I. When conducting medical necessity determinations, the MNRO shall request only the information necessary to certify an admission to a facility, procedure or treatment, length of stay, frequency, level of care or duration of health care services.

J. Compensation to individuals participating in a medical necessity determination program shall not contain incentives, direct or indirect, for those individuals to make inappropriate or adverse review determinations. Compensation to any such individuals shall not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

K. An adverse determination shall not be based on the outcome of care or clinical information not available at the time the certification was made, regardless of whether the covered person or provider assumes potential liability for the cost of such care while awaiting a coverage determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

#### **§6217. Procedures for Making Medical Necessity Determinations**

A. An MNRO shall maintain written procedures for making determinations and for notifying covered persons and providers and other authorized representatives acting on behalf of covered persons of its decisions.

B.1. In no less than eighty percent of initial determinations, an MNRO shall make the determination within two working days of obtaining any appropriate medical information that may be required regarding a proposed admission, procedure, or service requiring a review determination. In no instance shall any determination of medical necessity be made later than thirty days from receipt of the request unless the patient's physician or other authorized representative has agreed to an extension.

2. In the case of a determination to certify a nonemergency admission, procedure, or service, the MNRO shall notify the provider rendering the service within one work day of making the initial certification and shall provide documented confirmation of such notification to the provider within two working days of making the initial certification.

3. In the case of an adverse determination of a nonemergency admission, the MNRO shall notify the provider rendering the service within one workday of making the adverse determination and shall provide documented confirmation of the notification to the provider within two working days of making the adverse determination.

C.1. For concurrent review determinations of medical necessity, an MNRO shall make such determinations within one working day of obtaining the results of appropriate medical information that may be required.

2. In the case of a determination to certify an extended stay or additional services, the MNRO shall notify the provider rendering the service within one working day of making the certification and shall provide documented confirmation to the provider within two working days of the authorization. Such documented notification shall include the number of intended days or next review date and the new total number of days or services approved.

3. In the case of an adverse determination, the MNRO shall notify the provider rendering the service within one working day of making the adverse determination and shall provide documented notification to the provider within one workday of such notification. The service shall be authorized and payable by the health insurance issuer without liability, subject to the provisions of the policy or subscriber agreement, until the provider has been notified in writing of the adverse determination. The covered person shall not be liable for the cost of any services delivered following documented notification to the provider unless notified of such liability in advance.

D.1. For retrospective review determinations, the MNRO shall make the determination within 30 working days of obtaining the results of any appropriate medical information that may be required, but in no instance later than 180 days from the date of service. The MNRO shall not subsequently retract its authorization after services have been provided or reduce payment for an item or service furnished in reliance upon prior approval, unless the approval was based upon a material omission or misrepresentation about the covered person's health condition made by the provider or unless the coverage was duly canceled for fraud, misrepresentation, or nonpayment of premiums.

2. In the case of an adverse determination, the MNRO shall notify in writing the provider rendering the service and the covered person within five working days of making the adverse determination.

E. A written notification of an adverse determination shall include the principal reason or reasons for the determination, the instructions for initiating an appeal or reconsideration of the determination, and the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination. An MNRO shall provide the clinical rationale in writing for an adverse determination, including the clinical review criteria used to make that determination, to any party who received notice of the adverse determination and who follows the procedures.

F. An MNRO shall have written procedures listing the health or appropriate medical information required from a covered person or health care provider in order to make a medical necessity determination. Such procedures shall be given verbally to the covered person or health care provider when requested. The procedures shall also outline the process to be followed in the event that the MNRO determines the need for additional information not initially requested.

G. An MNRO shall have written procedures to address the failure or inability of a provider or a covered person to provide all necessary information for review. In cases where the provider or a covered person will not release necessary information, the MNRO may deny certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

#### **§6219. Informal Reconsideration**

A. In a case involving an initial determination or a concurrent review determination, an MNRO shall give the provider rendering the service an opportunity to request, on behalf of the covered person, an informal reconsideration of an adverse determination by the physician or clinical peer making the adverse determination. Allowing a 10-day period following the date of the adverse determination for requesting an informal reconsideration shall be considered reasonable.

B. The informal reconsideration shall occur within one working day of the receipt of the request and shall be conducted between the provider rendering the service and the MNRO's physician authorized to make adverse determinations or a clinical peer designated by the medical

director if the physician who made the adverse determination cannot be available within one working day.

C. If the informal reconsideration process does not resolve the differences of opinion, the adverse determination may be appealed by the covered person or the provider on behalf of the covered person. Informal reconsideration shall not be a prerequisite to a standard appeal or an expedited appeal of an adverse determination.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

#### **§6221. Appeals of Adverse Determinations; Standard Appeals**

A. An MNRO shall establish written procedures for a standard appeal of an adverse determination, which may also be known as a first level internal appeal. Such procedures shall be available to the covered person and to the provider acting on behalf of the covered person. Such procedures shall provide for an appropriate review panel for each appeal that includes health care professionals who have appropriate expertise. Allowing a 60-day period following the date of the adverse determination for requesting a standard appeal shall be considered reasonable.

B. For standard appeals, a duly licensed physician shall be required to concur with any adverse determination made by the review panel.

C. The MNRO shall notify in writing both the covered person and any provider given notice of the adverse determination, of the decision within thirty working days following the request for an appeal, unless the covered person or authorized representative and the MNRO mutually agree that a further extension of the time limit would be in the best interest of the covered person. The written decision shall contain the following:

1. the title and qualifying credentials of the physician affirming the adverse determination;
2. a statement of the reason for the covered person's request for an appeal;
3. an explanation of the reviewers' decision in clear terms and the medical rationale in sufficient detail for the covered person to respond further to the MNRO's position;
4. if applicable, a statement including the following:
  - a. a description of the process to obtain a second level review of a decision;
  - b. the written procedures governing a second level review, including any required time frame for review.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 22:2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

#### **§6223. Second Level Review**

A.. An MNRO shall establish a second level review process to give covered persons who are dissatisfied with the first level review decision the option to request a review at which the covered person has the right to appear in person before authorized representatives of the MNRO. An MNRO shall provide covered persons with adequate notice of this option, as described in Section 6221.C. Allowing a 30-day

period following the date of the notice of an adverse standard appeal decision shall be considered reasonable.

B. An MNRO shall conduct a second level review for each appeal. Appeals shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer shall not have been involved in the initial adverse determination. A majority of any review panel used shall be comprised of persons who were not previously involved in the appeal. However, a person who was previously involved with the appeal may be a member of the panel or appear before the panel to present information or answer questions. The panel shall have the legal authority to bind the MNRO and the health insurance issuer to the panel's decision.

C. An MNRO shall ensure that a majority of the persons reviewing a second level appeal are health care professionals who have appropriate expertise. An MNRO shall issue a copy of the written decision to a provider who submits an appeal on behalf of a covered person. In cases where there has been a denial of service, the reviewing health care professional shall not have a material financial incentive or interest in the outcome of the review.

D. The procedures for conducting a second level review shall include the following.

1. The review panel shall schedule and hold a review meeting within 45 working days of receiving a request from a covered person for a second level review. The review meeting shall be held during regular business hours at a location reasonably accessible to the covered person. In cases where a face-to-face meeting is not practical for geographic reasons, an MNRO shall offer the covered person and any provider given a notice of adverse determination the opportunity to communicate with the review panel, at the MNRO's expense, by conference call, video conferencing, or other appropriate technology. The covered person shall be notified of the time and place of the review meeting in writing at least 15 working days in advance of the review date; such notice shall also advise the covered person of his rights as specified in Paragraph three of this Subsection. The MNRO shall not unreasonably deny a request for postponement of a review meeting made by a covered person.

2. Upon the request of a covered person, an MNRO shall provide to the covered person all relevant information that is not confidential or privileged.

3. A covered person shall have the right to the following:

- a. attend the second level review;
- b. present his case to the review panel;
- c. submit supporting material and provide testimony in person or in writing or affidavit both before and at the review meeting;
- d. ask questions of any representative of the MNRO.

4. The covered person's right to a fair review shall not be made conditional on the covered person's appearance at the review.

5. For second level appeals, a duly licensed and appropriate clinical peer shall be required to concur with any adverse determination made by the review panel.

6. The MNRO shall issue a written decision to the covered person within five working days of completing the review meeting. The decision shall include the following:

- a. the title and qualifying credentials of the appropriate clinical peer affirming an adverse determination;
- b. a statement of the nature of the appeal and all pertinent facts;
- c. the rationale for the decision;
- d. reference to evidence or documentation used in making that decision;
- e. the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination;
- f. notice of the covered person's right to an external review, including the following:
  - i. a description of the process to obtain an external review of a decision;
  - ii. the written procedures governing an external review, including any required time frame for review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

#### **§6225. Request for External Review**

A. Each health benefit plan shall provide an independent review process to examine the plan's coverage decisions based on medical necessity. A covered person, with the concurrence of the treating health care provider, may make a request for an external review of a second level appeal adverse determination.

B. Except as provided in this Subsection, an MNRO shall not be required to grant a request for an external review until the second level appeal process as set forth in this Chapter has been exhausted. A request for external review of an adverse determination may be made before the covered person has exhausted the MNRO's appeal, if any of the following circumstances apply.

1. The covered person has an emergency medical condition, as defined in this Chapter.

2. The MNRO agrees to waive the requirements for the first level appeal, the second level appeal, or both.

C. If the requirement to exhaust the MNRO's appeal procedures is waived under Paragraph B.1 of this Section, the covered person's treating health care provider may request an expedited external review. If the requirement to exhaust the MNRO's appeal procedures is waived under Paragraph B.2 of this Section, a standard external review shall be performed.

D. Nothing in this Section shall prevent an MNRO from establishing an appeal process, approved by the commissioner, that provides persons who are dissatisfied with the first level review decision an external review in lieu of requiring a second level review prior to requesting such external review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

#### **§6227. Standard External Review**

A. Within sixty days after the date of receipt of a notice of a second level appeal adverse determination, the covered person whose medical care was the subject of such determination may, with the concurrence of the treating health care provider, file a request for an external review with the MNRO. Within seven days after the date of receipt of the request for an external review, the MNRO shall provide the documents and any information used in making the second level appeal adverse determination to its designated independent review organization. The independent review organization shall review all of the information and documents received and any other information submitted in writing by the covered person or the covered person's health care provider. The independent review organization may consider the following in reaching a decision or making a recommendation:

1. the covered person's pertinent medical records;
2. the treating health care professional's recommendation;
3. consulting reports from appropriate health care professionals and other documents submitted by the MNRO, covered person, or the covered person's treating provider;
4. any applicable generally accepted practice guidelines, including but not limited to those developed by the federal government or national or professional medical societies, boards, and associations;
5. any applicable clinical review criteria developed exclusively and used by MNRO that are within the appropriate standard for care, provided such criteria were not the sole basis for the decision or recommendation unless the criteria had been reviewed and certified by the appropriate licensing board of this state.

B. The independent review organization shall provide notice of its recommendation to the MNRO, the covered person or his authorized representative and the covered person's health care provider within 30 days after the date of receipt of the second level determination information subject to an external review, unless a longer period is agreed to by all parties.

AUTHORITY NOTE: Promulgated in accordance with La. R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

#### **§6229. Expedited Appeals**

A. An MNRO shall establish written procedures for the expedited appeal of an adverse determination involving a situation where the time frame of the standard appeal would seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function. An expedited appeal shall be available to and may be initiated by the covered person, with the consent of the treating health care professional, or the provider acting on behalf of the covered person.

B. Expedited appeals shall be evaluated by an appropriate clinical peer or peers in the same or a similar specialty as would typically manage the case under review. The clinical peer or peers shall not have been involved in the initial adverse determination.

C. An MNRO shall provide an expedited appeal to any request concerning an admission, availability of care,

continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility. Such emergency services may include services delivered in the emergency room, during observation, or other setting that resulted in direct admission to a facility.

D. In an expedited appeal, all necessary information, including the MNRO's decision, shall be transmitted between the MNRO and the covered person, or his authorized representative, or the provider acting on behalf of the covered person by telephone, telefacsimile, or any other available expeditious method.

E. In an expedited appeal, an MNRO shall make a decision and notify the covered person or the provider acting on behalf of the covered person as expeditiously as the covered person's medical condition requires, but in no event more than seventy-two hours after the appeal is commenced. If the expedited appeal is a concurrent review determination, the service shall be authorized and payable, subject to the provisions of the policy or subscriber agreement, until the provider has been notified of the determination in writing. The covered person shall not be liable for the cost of any services delivered following documented notification to the provider until documented notification of such liability is provided to the covered person.

F. An MNRO shall provide written confirmation of its decision concerning an expedited appeal within two working days of providing notification of that decision if the initial notification was not in writing. The written decision shall contain the information specified in R.S. 22:3079.C(1) through (3).

G. An MNRO shall provide reasonable access, within a period of time not to exceed one workday, to a clinical peer who can perform the expedited appeal.

H. In any case where the expedited appeal process does not resolve a difference of opinion between the MNRO and the covered person or the provider acting on behalf of the covered person, such provider may request a second level appeal of the adverse determination.

I. An MNRO shall not provide an expedited appeal for retrospective adverse determinations.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

### **§6231. Expedited External Review of Urgent Care Requests**

A. At the time that a covered person receives an adverse determination involving an emergency medical condition of the covered person being treated in the emergency room, during hospital observation, or as a hospital inpatient, the covered person's health care provider may request an expedited external review. Approval of such requests shall not unreasonably be withheld.

B. For emergency medical conditions, the MNRO shall provide or transmit all necessary documents and information used in making the adverse determination to the independent review organization by telephone, telefacsimile, or any other available expeditious method.

C. In addition to the documents and information provided or transmitted, the independent review organization

may consider the following in reaching a decision or making a recommendation:

1. the covered person's pertinent medical records;
2. the treating health care professional's recommendation;
3. consulting reports from appropriate health care professionals and other documents submitted by the MNRO, the covered person, or the covered person's treating provider;
4. any applicable generally accepted practice guidelines, including but not limited to those developed by the federal government or national or professional medical societies, boards, and associations.;
5. Any applicable clinical review criteria developed exclusively and used by the MNRO that are within the appropriate standard for care, provided such criteria were not the sole basis for the decision or recommendation, unless the criteria had been reviewed and certified by the appropriate state licensing board of this state.

D. Within 72 hours after receiving appropriate medical information for an expedited external review, the independent review organization shall do the following:

1. make a decision to uphold or reverse the adverse determination;
2. notify the covered person, the MNRO, and the covered person's health care provider of the decision. Such notice shall include the principal reason or reasons for the decision and references to the evidence or documentation considered in making the decision.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

### **§6233. Binding Nature of External Review Decisions**

A. Coverage for the services required under this Chapter shall be provided subject to the terms and conditions generally applicable to benefits under the evidence of coverage under a health insurance policy or HMO subscriber agreement. Nothing in this Chapter shall be construed to require payment for services that are not otherwise covered pursuant to the evidence of coverage under the health insurance policy or HMO subscriber agreement or otherwise required under any applicable state or federal law.

B. An external review decision made pursuant to this Chapter shall be binding on the MNRO and on any health insurance issuer or health benefit plan that utilizes the MNRO for making medical necessity determinations. No entity shall hold itself out to the public as following the standards of a licensed or authorized MNRO that does not adhere to all requirements of this Chapter including the binding nature of external review decisions.

C. An external review decision shall be binding on the covered person for purposes of determining coverage under a health benefit plan that requires a determination of medical necessity for a medical service to be covered.

D. A covered person or his representatives, heirs, assigns, or health care providers shall have a cause of action for benefits or damages against an MNRO, health insurance issuer, health benefit plan, or independent review organization for any action involving or resulting from a decision made pursuant to this Chapter if the determination or opinion was rendered in bad faith or involved negligence,

gross negligence, or intentional misrepresentation of factual information about the covered person's medical condition. Causes of action for benefits or damages for actions involving or resulting from a decision made pursuant to this Chapter shall be limited to the party acting in bad faith, or involved in negligence, gross negligence or intentional misrepresentation of factual information about the covered person's medical condition.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

### **§6235. Minimum Qualifications for Independent Review Organizations**

A. The licensure, authorization, or certification of any entity as an MNRO or independent or external review organization shall be effective beginning on the date of first application for all entities who receive formal written authorization, licensure, or certification by the Commissioner of Insurance. This provision shall remain in effect until December 31, 2001. Any application filed after December 31, 2001 shall become effective upon final approval by the Department of Insurance and not upon date of first application. Therefore any application submitted and filed after December 31, 2001, the licensure, authorization or certification of an entity as an MNRO or independent or external review organization shall be effective upon the date final approval is granted by the Commissioner of Insurance. To qualify to conduct external reviews for an MNRO, an independent review organization shall meet the following minimum qualifications:

1. develop written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process that include, at a minimum, the following:

a. procedures to ensure that external reviews are conducted within the specified time frames and that required notices are provided in a timely manner;

b. procedures to ensure the selection of qualified and impartial clinical peer reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases;

c. procedures to ensure the confidentiality of medical and treatment records and clinical review criteria;

d. procedures to ensure that any individual employed by or under contract with the independent review organization adheres to the requirements of this Chapter.

2. establish a quality assurance program;

3. establish a toll-free telephone service to receive information related to external reviews on a twenty-four-hour-day, seven-day-a-week basis that is capable of accepting, recording, or providing appropriate instruction to incoming telephone callers during other than normal business hours.

B. Any clinical peer reviewer assigned by an independent review organization to conduct external reviews shall be a physician or other appropriate health care provider who meets the following minimum qualifications:

1. be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

2. be knowledgeable about the recommended health care service or treatment through actual clinical experience that may be based on either of the following:

a. the period of time spent actually treating patients with the same or similar medical condition of the covered person;

b. the period of time that has elapsed between the clinical experience and the present.

3. hold a nonrestricted license in a state of the United States and, in the case of a physician, hold a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the external review;

4. have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character.

C. In addition to the requirements of Subsection A of this Section, an independent review organization shall not own or control, be a subsidiary of, in any way be owned or controlled by, or exercise control with a health insurance issuer, health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

D. In addition to the other requirements of this Section, in order to qualify to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor the clinical peer reviewer assigned by the independent organization to conduct the external review shall have a material professional, familial, or financial interest with any of the following:

1. the MNRO that is the subject of the external review;

2. any officer, director, or management employee of the MNRO that is the subject of the external review;

3. the health care provider or the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review;

4. the facility at which the recommended health care service or treatment would be provided;

5. the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review;

6. the covered person who is the subject of the external review.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3, 22:2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

### **§6237. External Review Register**

A. An MNRO shall maintain written records in the aggregate and by health insurance issuer and health benefit plan on all requests for external review for which an external review was conducted during a calendar year, hereinafter referred to as the "register". For each request for external

review, the register shall contain, at a minimum, the following information:

1. a general description of the reason for the request for external review;
2. the date received;
3. the date of each review;
4. the resolution;
5. the date of resolution;
6. except as otherwise required by state or federal law, the name of the covered person for whom the request for external review was filed.

B. The register shall be maintained in a manner that is reasonably clear and accessible to the commissioner.

C. The register compiled for a calendar year shall be retained for the longer of three years or until the commissioner has adopted a final report of an examination that contains a review of the register for that calendar year.

D. The MNRO shall submit to the commissioner, at least annually, a report in the format specified by the commissioner. The report shall include the following for each health insurance issuer and health benefit plan:

1. the total number of requests for external review;
2. the number of requests for external review resolved and their resolution;
3. a synopsis of actions being taken to correct problems identified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

#### **§6239. Emergency Services**

A. Emergency services shall not be limited to health care services rendered in a hospital emergency room.

B. When conducting medical necessity determinations for emergency services, an MNRO shall not disapprove emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of such services if a prudent lay person acting reasonably would have believed that an emergency medical condition existed. With respect to care obtained from a non-contracting provider within the service area of a managed care plan, an MNRO shall not disapprove emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of the services if a prudent lay person would have reasonably believed that use of a contracting provider would result in a delay that would worsen the emergency or if a provision of federal, state, or local law requires the use of a specific provider.

C. If a participating provider or other authorized representative of a health insurance issuer or health benefit plan authorizes emergency services, the MNRO shall not subsequently retract its authorization after the emergency services have been provided or reduce payment for an item, treatment, or service furnished in reliance upon approval, unless the approval was based upon a material omission or misrepresentation about the covered person's health condition made by the provider of emergency services.

D. Coverage of emergency services shall be subject to state and federal laws as well as contract or policy provisions, including co-payments or coinsurance and deductibles.

E. For immediately required post-evaluation or post-stabilization services, an MNRO shall provide access to an authorized representative 24 hours a day, 7 days a week, to facilitate review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

#### **§6241. Confidentiality Requirements**

A. An MNRO shall annually provide written certification to the commissioner that its program for determining medical necessity complies with all applicable state and federal laws establishing confidentiality and reporting requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

#### **§6243. Severability**

A. If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation that can be given effect without the invalid provisions, item, or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statute of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

#### **§6245. Effective Date**

A. This regulation shall become effective upon final publication in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statute of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

A public hearing on this proposed regulation will be held on February 28, 2002 at 9 a.m. in the Plaza Hearing Room of the Insurance Building located at 950 North Fifth Street, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit and make comments. The comment period will end on the close of business of February 28, 2002.

Interested persons may obtain a copy of this proposed regulation, and may submit oral or written comments to Claire Lemoine, Chief Health Attorney, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, telephone (225) 342-4242.

J. Robert Wooley  
Acting Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Regulation 77C Medical Necessity  
Review Organizations**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
It is not anticipated that Regulation 77 would result in any implementation costs or savings to local or state governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Regulation 77 calls for an initial licensing fee of \$1,500 and a renewal fee every other year of \$1,500 for each Medical Necessity Review Organization (MNRO). Approximately 90 MNRO's were licensed in fiscal 2000/01. Approximately 20 MNRO's have been licensed in fiscal 2001/02. DOI has no way to estimate how many of the licensed MNRO's will seek renewal licenses in 2002/03 and 2003/04.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Regulation 77 calls for an initial licensing fee of \$1,500 and biennial renewal fee of \$1,500 from Medical Necessity Review Organizations seeking licensure in the state.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
Regulation 77 may result in some additional employment in the state as MNRO's are licensed and may have to hire additional employees. DOI has no way estimating the numbers of persons this may involve.

Chad M. Brown                      Robert E. Hosse  
Deputy Commissioner          General Government Section Director  
Management and Finance      Legislative Fiscal Office  
0112#046

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Board of Private Investigator Examiners**

**Private Investigator Continuing Education  
(LAC 46:LVII.518)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 37:3505.B.(1), the Louisiana Department of Public Safety and Corrections, Louisiana State Board of Private Investigator Examiners, hereby gives notice of its intent to amend Part LVII of Title 46, amending Chapter 5, Section 518, to require licensees to attend eight hours of continuing education every year (not every two years as the current law requires) and to further require renewal applications for each year to show compliance with this continuing education requirement.

This rule and regulation is an amendment to the initial rules and regulations promulgated by the Louisiana State Board of Private Investigator Examiners.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LVII. Private Investigator Examiners**

**Chapter 5. Application, Licensing, Training,  
Registration and Fees**

**§518. Continuing Education**

A. Each licensed private investigator is required to complete a minimum of eight hours of approved investigative educational instruction within the one year period immediately prior to renewal in order to qualify for a renewal license.

B. Each licensed private investigator is required to complete and return the LSBPIE Continuing Educational Compliance form with the request for license renewal each year. The form shall be signed under penalty of perjury and shall include documentation of each hour of approved investigation educational instruction completed.

C. Any licensee who wishes to apply for an extension of time to complete educational instruction requirements must submit a letter request setting forth reasons for the extension request to the Executive Director of the LSBPIE 30 days prior to license renewal. The Training Committee shall rule on each request. If an extension is granted, the investigator shall be granted 30 days to complete the required hours. Hours completed during a 30 day extension shall only apply to the previous year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505.B(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Louisiana State Board of Private Investigator Examiners, LR 22:371 (May 1996), amended LR 27:1016 (July 2001), LR 28:

Comments should be forwarded to Charlene Mora, Chairman, State Board of Private Investigator Examiners, 2051 Silverside Drive, Suite 190, Baton Rouge, Louisiana 70808. Written comments will be accepted through the close of business on February 9, 2002.

A copy of these rules may be obtained from the Louisiana State Board of Private Investigator Examiners, 2051 Silverside Drive, Suite 190, Baton Rouge, Louisiana 70808, (225) 763-3556.

Charlene Mora  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Private Investigator Continuing  
Education**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There will be no implementation cost for this rule change.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collection.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no economic benefit to individuals licensed by the Louisiana State Board of Private Investigator Examiners as the number of hours required of them for continuing education has been increased. Therefore, they will be expected to incur cost of approximately twice the previous costs they incurred for continuing education during the last year; and the same cost they incurred during the preceding year as this amendment returns the rule to where it was for the 2001 license renewals.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition or employment.

Celia R. Cangelosi  
Attorney  
0201#039

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Correction  
Corrections Services**

Adult Administrative Remedy Procedure  
(LAC 22:I.325)

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 15:1171 et seq., Corrections Administrative Remedy Procedure, and Administrative Procedures Act, R.S. 49:950 et seq., hereby provides notice of its intent to adopt the Adult Administrative Remedy Procedure. Prior LAC 22:I.325, Administrative Remedy Procedure, is now located at LAC 22:I.324.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 3. Adult and Juvenile Services**

**Subchapter A. General**

**§325. Adult Administrative Remedy Procedures**

**A. Administrative Remedy Procedure**

1. On September 18, 1985, the Department of Public Safety and Corrections installed in all of its adult institution a formal grievance mechanism for use by all inmates committed to the custody of the Department. The process bears the name Administrative Remedy Procedure (ARP). Inmates are required to use the procedure before they can proceed with a suit in Federal and State Courts.

2. Inmates are encouraged to continue to seek solutions to their concerns through informal means, but in order to insure their right to use the formal procedure, they should make their request to the Warden in writing within a 30 day period after an incident has occurred. If, after filing in the formal procedure an inmate receives a satisfactory response through informal means, the inmate may request (in writing) that the Warden cancel his formal request for an administrative remedy.

3. All inmates may request information about or assistance in using the procedure from their classification officer or from a counsel substitute who services their living area.

4. Original letters of request to the Wardens should be as brief as possible. Inmates should present as many facts as possible to answer all questions (who, what, when, where, and how) concerning the incident. If a request is unclear or the volume of attached material is too great, it may be rejected and returned to the inmate with a request for clarity or summarization on one additional page. The deadline for this request begins on the date the resubmission is received in the Warden's office.

5. Once an inmate's request procedure, he must use the manila envelope that is furnished to him with this First Step to continue in the procedure. The flaps on the envelope may be tucked into the envelope for mailing to the facility's ARP Screening Officer.

B. Purpose. Corrections Services has established the Administrative Remedy Procedure through which an inmate may seek formal review of a complaint which relates to any aspect of his incarceration if less formal methods have not resolved the matter. Such complaints and grievances include, but are not limited to any and all claims seeking monetary, injunctive, declaratory, or any other form of relief authorized by law and by way of illustration includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies, or statutes. Through this procedure, inmates shall receive reasonable responses and where appropriate, meaningful remedies.

C. Applicability. Inmates may request administrative remedies to situations arising from policies, conditions, or events within the institution that affect them personally. There are procedures already in place within all DPS&C institutions which are specifically and expressly incorporated into and made a part of this Administrative Remedy Procedure. These procedures shall constitute the administrative remedies for disciplinary matters and lost property claims. The following matters shall not be appealable through this Administrative Remedy Procedure:

1. court decisions and pending criminal matters over which the Department has no control or jurisdiction;

2. Pardon Board and Parole Board decisions (under Louisiana law, decisions of these Boards are discretionary, and may not be challenged);

3. Louisiana Risk Review Panel recommendations;

4. Lockdown Review Board decisions (inmates are furnished written reasons at the time this decision is made as to why they are not being released from lockdown, if that is the case. The Board's decision may not be challenged. There are, however, two bases for request for administrative remedy on Lockdown Review Board hearings):

a. that no reasons were given for the decision of the Board;

b. that a hearing was not held within 90 days from the offender's original placement in lockdown or from the last hearing. There will be a 20-day grace period attached hereto, due to administrative scheduling problems of the Board; therefore, a claim based on this ground will not be valid until 110 days have passed and no hearing has been held. As used in this procedure, the following definitions shall apply.

**D. Definitions**

*ARP Screening Officer* Ca staff member, designated by the Warden, whose responsibility is to coordinate and facilitate the Administrative Remedy Procedure process.

*Days* Calendar days.

*Emergency Grievance* Ca matter in which disposition within the regular time limits would subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate.

*Grievance* Ca written complaint by an inmate on the inmate's own behalf regarding a policy applicable within an institution, a condition within an institution, an action involving an inmate of an institution, or an incident occurring within an institution.

E. Policy. All inmates, regardless of their classification, impairment, or disability, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the Warden to provide appropriate assistance for inmates with literacy deficiencies or language barriers. No action shall be taken against an inmate for the good faith use of or good faith participation in the procedure. Reprisals of any nature are prohibited. Inmates are entitled to pursue, through the grievance procedure, a complaint that a reprisal occurred.

1. Reviewers. If an inmate registers a complaint against a staff member, that employee shall not play a part in making a decision on the request. However, this shall not prevent the employee from participating at the Step One level, since the employee complained about may be the best source from which to begin collecting information on an alleged incident. If the inmate is not satisfied with the decision rendered at the First Step, he should pursue his grievance to the Assistant Secretary of Adult Services via the Second Step.

2. Communications. Inmates must be made aware of the system by oral explanation at orientation and should have the opportunity to ask questions and receive oral answers. The procedures shall be posted in writing in areas readily accessible to all inmates.

3. Written Responses. At each stage of decision and review, inmates will be provided written answers that explain the information gathered or the reason for the decision reached along with simple directions for obtaining further review.

F. Procedure

1. Screening. The ARP Screening Officer will screen all requests prior to assignment to the First Step. The screening process should not unreasonably restrain the inmate's opportunity to seek a remedy.

a. If a request is rejected, it must be for one of the following reasons, which shall be noted on Form ARP.

i. This matter is not appealable through this process, such as:

- (a). court decisions;
- (b). Parole Board/Pardon Board decisions;
- (c). Louisiana Risk Review Panel recommendations;
- (d).

Lockdown Review Board (refer to section on "Applicability" [Subsection C]).

ii. There are specialized administrative remedy procedures in place for this specific type of complaint, such as:

- (a). disciplinary matters;

(b). lost property claims.

iii. It is a duplicate request.

iv. In cases where a number of inmates have filed similar or identical requests seeking administrative remedy, it is appropriate to respond only to the inmate who filed the initial request. Copies of the decision sent to other inmates who filed requests simultaneously regarding the same issue will constitute a completed action. All such requests will be logged.

v. The complaint concerns an action not yet taken or a decision which has not yet been made.

vi. The inmate has requested a remedy for another inmate.

vii. The inmate has requested a remedy for more than one incident (a multiple complaint).

viii. Established rules and procedures were not followed.

ix. If an inmate refuses to cooperate with the inquiry into his allegation, the request may be denied due to lack of cooperation.

x. There has been a time lapse of more than 30 days between the event and the initial request, unless waived by the Warden.

b. Notice of the initial acceptance or rejection of the request will be furnished to the inmate.

2. Initiation of Process. Inmates should always try to resolve their problems within the institution informally, before initiating the formal process. This informal resolution may be accomplished through discussions with staff members, etc. If the inmate is unable to resolve his problems or obtain relief in this fashion, he may initiate the formal process.

a. The method by which this process is initiated is by a letter from the inmate to the Warden. For purposes of this process, a letter is:

i. any form of written communication which contains this phrase: "This is a request for administrative remedy;" or

ii. Form ARP-1 at those institutions that wish to furnish forms for commencement of this process.

b. No request for administrative remedy shall be denied acceptance into the Administrative Remedy Procedure because it is or is not on a form; however, no letter as set forth above shall be accepted into the process unless it contains the phrase: "This is a request for administrative remedy."

c. Nothing in this procedure should serve to prevent or discourage an inmate from communicating with the Warden or anyone else in the Department of Public Safety and Corrections. The requirements set forth in this document for acceptance into the Administrative Remedy Procedure are solely to assure that incidents which may give rise to a cause of action will be handled through this two step system of review. All forms of communication to the Warden will be handled, investigated, and responded to as the Warden deems appropriate.

d. If an inmate refuses to cooperate with the inquiry into his allegation, the request may be denied by noting the lack of cooperation on the appropriate Step Response and returning it to the inmate.

3. Multiple Requests. If an inmate submits multiple requests during the review of a previous request, they will be

logged and set aside for handling at such time as the request currently in the system has been exhausted at the Second Step or until time limits to proceed from the First Step to the Second Step have lapsed. The Warden may determine whether a letter of instruction to the inmate is in order.

4. Reprisals. No action shall be taken against anyone for the good faith use of or good faith participation in the procedure.

a. The prohibition against reprisals should not be construed to prohibit discipline of inmates who do not use the system in good faith. Those who file requests that are frivolous or deliberately malicious may be disciplined under the appropriate rule violation described in the DPS&C "Disciplinary Rules and Procedures for Adult Inmate."

#### G Process

##### 1. First Step (Time Limit 40 days)

a. The inmate commences the process by writing a letter to the Warden, in which he briefly sets out the basis for his claim, and the relief sought (refer to section on "Procedure C Initiation of Process" [Subsection F] for the requirements of the letter.) The inmate should make a copy of his letter of complaint and retain it for his own records. The original letter will become a part of the process, and will not be returned to the inmate. The institution is not responsible for furnishing the inmate with copies of his letter of complaint. This letter should be written to the Warden within 30 days of an alleged event. (This requirement may be waived when circumstances warrant. The Warden, or his designee, will use reasonable judgment in such matters.) The requests shall be screened by the ARP Screening Officer and a notice will be sent to the inmate advising that his request is being processed or is being rejected. The Warden may assign another staff person to conduct further fact-finding and/or information gathering prior to rendering his response. The Warden shall respond to the inmate within 40 days from the date the request is received at the First Step.

b. For inmates wishing to continue to the Second Step, sufficient space will be allowed on the response to give a reason for requesting review at the next level. There is no need to rewrite the original letter of request as it will be available to all reviewers at each Step of the process.

##### 2. Second Step (Time Limit 45 days)

a. An inmate who is dissatisfied with the First Step response may appeal to the Secretary of the Department of Public Safety and Corrections by so indicating that he is not satisfied in the appropriate space on the response form and forwarding it to the ARP Screening Officer within 5 days of receipt of the decision. A final decision will be made by the Secretary and the inmate will be notified within 45 days of receipt. A copy of the Secretary's decision will be sent to the Warden.

b. If an inmate is not satisfied with the Second Step response, he may file suit in District Court. The inmate must furnish the administrative remedy procedure number on the court forms.

##### 3. Monetary Damages

a. Department of Public Safety and Corrections based upon credible facts within a grievance or complaint filed by an inmate, may determine that such an inmate is entitled to monetary damages where monetary damages are deemed by the Department as appropriate to render a fair and just remedy.

b. Upon a determination that monetary damages should be awarded, the remaining question is quantum, or the determination as to the dollar amount of the monetary damages to be awarded. The matter of determining quantum shall be transferred to the Office of Risk Management of the Division of Administration which shall then have the discretionary power to determine quantum. The determination reached by the Office of Risk Management shall be returned to the Department of Public Safety and Corrections for a final decision. If a settlement is reached, a copy of the signed release shall be given to the Warden on that same date.

##### 4. Deadlines and Time Limits

a. No more than 90 days from the initiation to completion of the process shall elapse, unless an extension has been granted. Absent such an extension, expiration of response time limits shall entitle the inmate to move on to the next Step in the process. Time limits begin on the date the request is assigned to a staff member for the First Step response.

b. An inmate may request an extension in writing of up to five days in which to file at stage of the process. This request shall be made to the ARP Screening Officer for an extension to initiate a request; to the Warden for the First Step and to the Assistant Secretary of Adult Services for the Second Step. The inmate must certify valid reasons for the delay, which reasons must accompany his untimely request. The issue of sufficiency of valid reasons for delay shall be addressed at each Step, along with the substantive issue of the complaint.

c. The Warden may request permission for an extension of not more than five days from the Assistant Secretary of Adult Services for the Step One review/response. The inmate must be notified in writing of such an extension.

d. In no case may the cumulative extensions exceed 25 days.

##### 5. Problems of an Emergency Nature

a. If an inmate feels he is subjected to emergency conditions, he must send an emergency request to the shift supervisor. The shift supervisor shall immediately review the request and forward the request to the level at which corrective action can be taken. All emergency requests shall be documented on an Unusual Occurrence Report.

b. Abuse of the emergency review process by an inmate shall be treated as a frivolous or malicious request and the inmate shall be disciplined accordingly. Particularly, but not exclusively, matters relating to administrative transfers and time computation disputes are not to be treated as emergencies for purposes of this procedure, but shall be expeditiously handled by the shift supervisor, when appropriate.

##### 6. Sensitive Issues

a. If the inmate believes the complaint is sensitive and would be adversely affected if the complaint became known at the institution, he may file the complaint directly with the Assistant Secretary of Adult Services (Second Step level). The inmate must explain, in writing, his reason for not filing the complaint at the institution.

b. If the Assistant Secretary of Adult Services agrees that the complaint is sensitive, he shall accept and respond to the complaint. If he does not agree that the

complaint is sensitive, he shall so advise the inmate in writing, and return the complaint to the Warden's office. The inmate shall then have five days from the date the rejection memo is received in the Warden's office to submit his request through regular channels (beginning with the First Step if his complaint is acceptable for processing in the Administrative Remedy Procedure).

7. Records

a. Administrative Remedy Procedure records are confidential. Employees who are participating in the disposition of a request may have access to records essential to the resolution of requests. Otherwise, release of these records is governed by R.S. 15:574.12.

b. All reports, investigations, etc., other than the inmate's original letter and responses, are prepared in anticipation of litigation, and are prepared to become part of the attorney's work product for the attorney handling the anticipated eventual litigation of this matter and are therefore confidential and not subject to discovery.

c. Records will be maintained as follows.

i. A computerized log will be maintained which will document the nature of each request, all relevant dates, and disposition at each step. Each institution will submit reports on Administrative Remedy Procedure activity in accordance with Department Regulation No. C-05-001 "Activity Reports/Unusual Occurrence Reports-Operations Units-Adult."

ii. Individual requests and disposition, and all responses and pertinent documents shall be kept on file at the institution or at Headquarters.

iii. Records shall be kept at least three years following final disposition of the request.

8. Transferred Inmates. When an inmate has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution will complete the processing through the First Step. The Warden of the receiving institution will assist in communication with the inmate.

9. Discharged Inmates. If an inmate is discharged before the review of an issue that affects the inmate after discharge is completed, or if he files a request after discharge on such an issue, the institution will complete the processing and will notify the inmate at his last known address. All other requests shall be considered moot when the inmate discharges, and shall not complete the process.

10. Annual Review. The Warden shall annually solicit comments and suggestions on the processing, the efficiency and the credibility of the Administrative Remedy Procedure from inmates and staff. A report with the results of such review shall be provided to the Assistant Secretary of Adult Services.

H. Effective Date. Only ARP requests filed on or after the effective date of this Regulation, as adopted pursuant to the Administrative Procedures Act, shall be governed by this procedure. All ARP requests filed prior to the effective date will be administered in accordance with the provisions of LAC 22:I.324, formerly LAC 22:I. 325, Administrative Remedy Procedure.

I. Request for Administrative Remedy Form (ARP-1)

ARP-1

ADMINISTRATIVE REMEDY PROCEDURE  
THIS IS A REQUEST FOR ADMINISTRATIVE REMEDY

Inmate's Name DOC # Date of Incident/Complaint

Place and Time of Incident/Complaint

Describe Nature of Complaint (i.e. WHO, WHAT, WHEN, WHERE, and HOW)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Inmate's Signature DOC # Date

TO: \_\_\_\_\_

Inmate's Name and DOC #

- ( ) ACCEPTED: Please respond to the inmate within 40 days.
- ( ) REJECTED: Your request has been rejected for the following reason:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date ARP Screening Officer

J. First Step Response Form (ARP-2)

ARP-2

ADMINISTRATIVE REMEDY PROCEDURE  
FIRST STEP RESPONSE FORM

TO: \_\_\_\_\_

Inmate's Name DOC # Living Unit

FROM: \_\_\_\_\_

First Step Respondent Title

Response to Request Dated \_\_\_\_\_ Received by Inmate \_\_\_\_\_

Instructions to Inmate: If you are not satisfied with this response, you may go to Step Two by checking below and forwarding to the ARP Screening Officer within 5 days of your receipt of this decision.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ( ) I am not satisfied with this response and wish to proceed to Step Two.
- REASON:

\_\_\_\_\_  
\_\_\_\_\_

Date Inmate's Signature DOC #



commence the day the request is accepted in the ARP process.

*Offender*Ca person incarcerated in a juvenile correctional institution.

*Sensitive Issue*Ca complaint which the offender believes would adversely affect him if it became known at the institution.

*Youth Programs Compliance Division (YPCD)*Ca division located at the Office of Youth Development Headquarters in Baton Rouge. Employees of this division are responsible for monitoring the ARP process.

#### D. Policy

1. The administrative remedy procedure for juveniles has been established for offenders to seek formal review of a complaint which relates to most aspects of their incarceration. Such complaints and grievances include, but are not limited to, any and all claims seeking monetary, injunctive, declaratory, or any other relief authorized by law. By way of illustration, this includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, lost personal property, denial of publications, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies or statutes. Through this procedure, offenders shall receive reasonable responses and where appropriate, meaningful remedies.

2. Offenders may request administrative remedies to situations arising from policies, conditions, or events within the institution that affect them personally. Disciplinary reports are not grievable and must be handled through the disciplinary appeal system. Court decisions and pending criminal and adjudication matters over which the Department has no control or jurisdiction shall not be appealable through this administrative remedy procedure.

3. All offenders, regardless of their classification, impairment or handicap, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the Warden to provide appropriate assistance for offenders with literacy deficiencies or language barriers. No action shall be taken against an offender for the good faith use of or good faith participation in the procedure. Reprisals of any nature are prohibited. Offenders are entitled to pursue, through this grievance procedure, a complaint that a reprisal occurred.

4. All offenders may request information and obtain assistance in using the administrative remedy procedure from his case manager, counselor, or other staff member. Nothing in this administrative remedy procedure will serve to prevent or discourage an offender from communicating with the Warden or anyone else in the Department.

#### E. General Procedures

1. Dissemination. New employees and incoming offenders must be made aware of the administrative remedy procedure in writing and by oral explanation at orientation and have the opportunity to ask questions and receive oral answers. A simplified version of the administrative remedy procedure will be provided in booklet form to the offenders during the orientation process. This version of the procedure shall also be posted in areas readily accessible to all employees and offenders.

2. Informal Resolution. Offenders are encouraged to resolve their problems within the institution informally, before initiating the formal ARP process. This informal

resolution may be sought by talking to his case manager, counselor, or other staff member. An attempt at informal resolution does not affect the timeframe for filing an ARP; therefore, the offender and staff member assisting with informal resolution must be alert to the 30 calendar day filing timeframe so that the opportunity to file an ARP is not missed when it appears that the situation will not be informally resolved before the expiration of the filing period.

#### 3. Initiation of ARP

a. An ARP is initiated by completing the first part of the Juvenile ARP Form (see Subsection N). No request for ARP shall be denied acceptance because it is not on a form; however, all requests must contain a statement or phrase to the effect: "This is a request for administrative remedy;" "This is a request for ARP;" or "ARP." Upon receipt by the ARP Coordinator, any such request will be attached to an ARP form.

b. The offender has 30 calendar days after the incident occurred in which to file a complaint. The ARP is considered "filed" upon receipt by the ARP Coordinator or designee. This includes those ARPs placed in the ARP or grievance box over the weekend or on a legal holiday. The ARP forms shall be available at designated sites at each institution and from case managers.

c. The offender shall complete the first part of the form outlining the problem and remedy requested. His case manager, counselor, or other staff member will be available for assistance in completing the form at each stage of the process.

d. If additional space is needed for completing any part of the form, another page of paper may be used and attached to the original form. The offender must give the completed, original form to his case manager or place it in the designated collection site to be picked by the ARP Coordinator.

e. Offenders released from secure care prior to filing their ARP should send the ARP directly to the ARP Coordinator. The ARP must be postmarked within 30 days or received within the 30 calendar day timeframe, if not mailed.

4. Screening of Requests. The ARP Coordinator will screen all requests prior to the Step One review/response. If the same complaint is received from different offenders, each must be reviewed as an individual complaint. If the ARP is rejected, the reason(s) for rejection shall be noted on the Juvenile ARP Form. Copies of ARP acceptances, rejections, etc. will be maintained by the ARP Coordinator. The Youth Programs Compliance Division will be copied on all rejections. A request may be rejected for one or more of the following reasons (See Part 10, "Judicial Review," for consequences of rejection).

a. The complaint pertains to a disciplinary matter, court decision or a judge's order in the offender's case.

b. The complaint concerns an action not yet taken or decision which has not yet been made.

c. There has been a time lapse of more than 30 calendar days between the event and receipt of the initial request.

d. The date of the event is not on the form. In this case, the form will be returned to the offender to have the correct date noted, however, the original 30 day time limit will still apply.

e. The offender has requested an administrative remedy for another offender.

f. A request is unclear. If this occurs, the request may be rejected and returned to the offender with a request for clarity. The deadline for this request will begin on the date the re-submission is received by the ARP Coordinator (within five calendar days in a secure facility and 10 calendar days if the offender has been released).

g. An offender refuses to cooperate with the inquiry into his allegation. If this occurs, the request may be rejected by noting the lack of cooperation on the Juvenile ARP Form and returning it to the offender.

h. The request is a duplicate of a previous request submitted by the same offender.

i. The request contains several unrelated complaints. Normally, an offender should not include more than one complaint in a single ARP. The ARP Coordinator has the discretion to accept or reject the ARP if it contains several unrelated complaints.

5. Reprisals. No action shall be taken against any offender for the good faith use of or good faith participation in the ARP. The prohibition against reprisals should not be construed to prohibit discipline of offenders who do not use the system in good faith. Those who file requests that are, as determined by the ARP Coordinator, frivolous or deliberately malicious may be disciplined under the appropriate rule violation contained in the "Disciplinary Rules and Procedures for Juvenile Offenders."

F. Step One (Maximum Time Limit C21 Calendar Days). ARP Coordinator's Review and Warden's Response

1. The offender will begin the process by completing the first part of a Juvenile ARP Form, which will briefly set out the basis for the claim, and the relief sought. The form must be submitted within 30 calendar days of the incident which caused the grievement. The 30-day requirement may be waived by the Warden when circumstances warrant, i.e. if the offender is ill for an extended period of time or if a significant, unusual event affects the offender's ability to file the ARP. The offender may also request a five calendar day extension from the ARP Coordinator if additional time is needed to prepare the ARP.

2. The original Juvenile ARP Form submitted by the offender will become part of the process, and will not be returned to the offender until the Warden's response (Step One) has been finalized.

3. ARPs shall be screened and logged by the ARP Coordinator. If appropriate for handling, the ARP Coordinator or fact-finding person assigned by the ARP Coordinator will begin fact-finding, including communication with the various program managers for program specific complaints, if needed. The ARP Coordinator will send notice to the offender via a copy of the Juvenile ARP Form regarding the status (acceptance/rejection) of the request. The Warden should be kept apprised of the status of the ARP throughout the process.

4. ARPs filed by an attorney must include proof of representation in the form of a signed pleading, a letter signed by the offender's parent or guardian advising of the retention of the attorney or some other legal authorization for the attorney's representation. The ARP Coordinator or fact-finding person cannot interview the offender without

contacting the attorney to give the attorney an opportunity to be present during the ARP Coordinator/fact-finding person's interview with the offender. The offender may not be interviewed without the attorney (unless the attorney waives his presence) for a minimum of two business days after the staff's contact with the attorney. If the attorney cannot be available within this timeframe, the ARP process will proceed as usual. If no proof of representation is attached to the ARP, the 48-hour waiting period is not required.

5. If the offender advises the ARP Coordinator or fact-finding person during the investigation that he has spoken with an attorney about the ARP, the interview must cease. The ARP Coordinator or fact-finding person will obtain the attorney's name and telephone number from the offender and contact the attorney following the procedures described in the preceding paragraph.

6. The ARP Coordinator will submit the ARP, supporting documentation and recommendation to the Warden for final Step One action, which must be completed within 21 calendar days of receipt of the ARP by the ARP Coordinator. Emergency and medical, safety or abuse-related requests should be handled expeditiously. Abuse-related requests should also be copied to the Project Zero Tolerance Investigators for verification that an investigation has been or is being conducted (if appropriate to the circumstances.)

7. The Warden may return the Juvenile ARP Form to the ARP Coordinator for additional information or further review prior to rendering the response

8. Once the Warden's response has been entered onto the original Juvenile ARP Form, the form will be returned to the ARP Coordinator. The ARP Coordinator will log and forward the original to the offender, keep a copy for the ARP file and send a copy to the appropriate section of the institution, if applicable. Copies of documents gathered in preparation of the review and response to the grievance will be maintained in the ARP file.

9. Unless the offender appeals to Step Two, no further action is needed at this level.

G. Step Two (Maximum Time Limit C21 Calendar Days). Secretary's Response

1. An offender who is dissatisfied with the Step One decision may appeal to the Secretary. Within 10 days of receipt of the Step One decision, the offender must complete the next part of the original ARP noting the request for the Step Two review and provide it to his case manager or place it in the designated collection site for the ARP Coordinator to pick up. His case manager or other staff member will be available to assist as needed with filing the appeal.

2. The ARP Coordinator will retain a copy for the ARP file, log and mail the original form along with copies of any supporting documentation directly to the Secretary or his designee. For the purpose of the Step Two response, this authority has been delegated by the Secretary to the Assistant Secretary of the Office of Youth Development (OYD).

3. A final decision will be made by the Assistant Secretary/OYD and the offender will be notified of the decision by mail (copy of the ARP form) postmarked within 21 calendar days of the Assistant Secretary's receipt of the appeal. The Assistant Secretary/OYD will retain a copy of the ARP and return the original to the ARP Coordinator. The ARP Coordinator will copy the decision to the Warden,

offender's attorney (if ARP was filed by the attorney), and to the ARP file. The ARP Coordinator will also insure the original response is sent to the offender and obtain the offender's signed acknowledgment of receipt.

#### H. Judicial Review.

1. If an offender's ARP is rejected or if he is not satisfied with the Step Two response, he may seek judicial review of the decision pursuant to R.S. 15:1177 et seq. within 30 calendar days after receipt and signing acknowledgment of receipt of the decision.

2. In these cases, the ARP Coordinator will notify the offender's parents or guardian and attorney (if applicable), in writing, that the departmental grievance procedure has been exhausted.

#### I. Timeframes and Extensions

1. An offender may make a written request to the ARP Coordinator for an extension of up to five calendar days in which to initiate an ARP. He may make a written request to the Warden for an extension of up to five calendar days in which to appeal to the Secretary. (This does not limit the Warden's discretion under Section 8.A. to grant any filing timeframe waiver that he deems appropriate.) The Warden must certify valid reasons for the delay.

2. The Warden may make a written request to the Assistant Secretary/OYD for an extension of up to seven calendar days for the Step One review/response. The offender must be notified in writing of such an extension. The Assistant Secretary/OYD may extend time needed for his response when such is deemed necessary. However, in no case may the cumulative extensions exceed 30 calendar days. This does not include waivers granted by the Warden due to the offender's illness or other significant, unusual events.

3. Unless an extension has been granted, no more than 42 calendar days shall elapse from the ARP coordinator's receipt of the ARP to completion of the Step Two process. Absent such an extension, expiration of response time limits shall entitle the offender to move on to the next step in the process.

#### J. Sensitive Issues

1. If the offender believes his complaint is sensitive and he would be adversely affected if it became known at the institution, he may file the complaint directly with the Assistant Secretary/OYD. The offender must explain, in writing, the reason for not filing the complaint at the institution.

2. If the Assistant Secretary/OYD agrees that the complaint is sensitive, he shall accept and respond to the complaint. If he does not agree that the complaint is sensitive, he shall so advise the offender in writing, and return the complaint. When this occurs, the Assistant Secretary/OYD shall also send a copy of this communication to the Warden and to the ARP Coordinator. The ARP Coordinator will insure that the decision is delivered to the offender and obtain the offender's signature acknowledging receipt.

3. The offender shall then have the normal 30 calendar day deadline from the date the incident occurred or seven calendar days from the date he receives the rejection (whichever is longer) to submit his request through regular channels beginning with Step One.

#### K. ARPs Related to Lost Property Claims

1. Under no circumstances may an offender be compensated for unsubstantiated loss, or for a loss which results from the offender's own acts or for any loss resulting from bartering, trading, selling to, or gambling with other offenders. If the loss of personal property occurs through the negligence of the institution and/or its employees, the offender's claim may be processed as described below.

2. If a state-issue item is available, the offender will be offered such as replacement for the lost personal property. If a state-issue replacement is not available, the Warden or his designee will determine a reasonable value for the lost personal property. The maximum liability is \$50. Regardless of whether the ARP results in a monetary or non-monetary replacement, the Lost Property Agreement form (see Subsection O) will be completed and submitted to the offender for his signature. ARPs (with Lost Property Agreement forms attached) resulting in monetary settlements will be forwarded to the Assistant Secretary/OYD for review and processing. These ARPs must include a cover letter advising that the ARP is for settling a lost property claim.

3. The ARP will be processed in accordance with the established timeframes and guidelines except that the response will not be delayed pending the processing of the monetary award by the Assistant Secretary/OYD.

#### L. Miscellaneous

1. Records. Administrative remedy procedure records are confidential and release of these records is governed by R.S. 15:574.12 and Ch.C. Art. 412. Records shall be kept at least three years following final disposition of the request. The Assistant Secretary/OYD shall formulate a procedure for orderly disposal of these records. The following records must be maintained. The institution may retain other records as deemed appropriate.

a. A database (on computer) will be maintained by the ARP Coordinator which will document the nature of each request, all relevant dates, recommendations and dispositions of Steps One and Two.

b. Each institution will submit reports on ARP activity in accordance with Department Regulation No. C-05-001-J.

c. Individual ARPs and dispositions, and all responses and pertinent documents shall be kept on file at the ARP Coordinator's office.

2. Transferred Offenders. When an offender has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution will complete the processing through Step One. The Warden of the receiving institution will assist in communication with the offender.

3. Discharged Offenders. If an offender is discharged before the review of an ARP, or if he files an ARP after discharge, the institution will complete the processing and will notify the offender at his last known address. (The 30 calendar day timeframe in which to file an ARP applies regardless of whether the offender has been discharged from secure care.)

4. Monetary Damages. Based upon credible facts within an ARP, the Assistant Secretary/OYD may find cause to believe that monetary damages are a fair and just remedy. The Assistant Secretary/OYD shall consult with the

Secretary and the Legal Section of the Department to determine if monetary damages are appropriate. Upon finding that monetary damages should be awarded, a dollar amount of the monetary damages to be awarded must be determined. This matter shall be referred to the Office of Risk Management (ORM) of the Division of Administration. If a settlement is reached, a copy of the signed release shall be given/faxed to the appropriate institution.

5. Annual Review. The Warden shall annually solicit comments and suggestions from offenders and staff regarding the handling of requests, the efficiency and the credibility of the administrative remedy procedure and report the results of such review to the Assistant Secretary/OYD and the Director of YPCD.

M. Effective Date. Only ARP requests filed on or after the effective date of this Regulation, as adopted pursuant to the Administrative Procedures Act, shall be governed by this procedure and all ARP requests filed prior to the effective date will be administered in accordance with the provisions of LAC 22:I.324, formerly LAC 22:I.325, Administrative Remedy Procedure. All juvenile lost property claims filed prior to the effective date of this rule will be administered in accordance with LAC 22:I.389. All juveniles lost property claims filed after the effective date of this rule shall be governed by this procedure only.

N. Juvenile ARP Form

DPS&C - CORRECTIONS SERVICES Number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
JUVENILE ARP FORM Date Received: \_\_\_\_\_

Name: \_\_\_\_\_ JIRMS Number: \_\_\_\_\_  
Institution: \_\_\_\_\_ Housing Unit: \_\_\_\_\_

"THIS IS A REQUEST FOR ARP"

(You may ask your case manager or other staff members for help completing this form.)  
State your problem (WHO, WHAT, WHEN, WHERE AND HOW) and the remedy requested (what you want to solve the problem):

Problem: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Remedy requested: \_\_\_\_\_

Date of Incident: \_\_\_\_\_ Today's Date: \_\_\_\_\_

This form must be completed within 30 calendar days of the date of the incident and given to the ARP Coordinator or placed in the ARP/grievance box.

Step One CARP Coordinator's Review and Warden's Response

(Maximum Time For Processing: 21 calendar days)

\_\_\_\_ Denied \_\_\_\_ Rejected \_\_\_\_ Returned \_\_\_\_ Accepted Date: \_\_\_\_\_

Reason: \_\_\_\_\_

\_\_\_\_ Handled Informally By \_\_\_\_\_

AC's Recommendation:

Sent to Warden on: \_\_\_\_\_ AC's Signature: \_\_\_\_\_

Warden's response to your ARP Step One request: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ Warden's Signature: \_\_\_\_\_

If you are not satisfied with this response, you may go to Step Two. The ARP Coordinator must submit your request to the Secretary within 10 calendar days after you receive the Step One response.

Received Step One on: \_\_\_\_\_ Juvenile's Signature: \_\_\_\_\_

Request Step Two: \_\_\_\_yes \_\_\_\_no Reason for Step Two request: \_\_\_\_\_  
\_\_\_\_\_

Date Step Two request received by AC: \_\_\_\_\_ Date Sent to Secretary: \_\_\_\_\_

AC's Signature: \_\_\_\_\_

Step Two - Secretary's Response

(Maximum Time For Processing: 21 calendar days)

Date Received:

Secretary's response to ARP Step Two request: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ Secretary's Signature

Date received Secretary's response: \_\_\_\_\_ Juvenile's Signature

If you are not satisfied with this response, you may seek judicial review. A request for judicial review must be submitted to the court within 30 calendar days after receiving the Step Two decision.

O. Lost Property Agreement

Rev. 01-01-02

LOST PROPERTY AGREEMENT

I, \_\_\_\_\_ (Offender name), JIRMS # \_\_\_\_\_, filed an ARP for \_\_\_\_\_ (description of lost property.) My ARP was filed on \_\_\_\_\_. I have received \_\_\_\_\_ as a settlement for my lost property. Since I have received a settlement for my lost property, the State of Louisiana (Department of Public Safety and Corrections [DPS&C]) does not owe me anything for my property which was reported lost on \_\_\_\_\_ (Date ARP filed.) I agree to release the State of Louisiana (DPS&C) and any of its agents, representatives, officers and employees from any liability for compensation, damages and any other amounts that may be owed to me because my property was lost. I also agree to discharge the State of Louisiana of any liability that may exist. I agree to all the terms of this agreement.

WITNESSES:

\_\_\_\_\_  
(Signature of Offender)

\_\_\_\_\_  
(Date)

Warden's Approval \_\_\_\_\_

Secretary's Approval \_\_\_\_\_

(Necessary for monetary settlement)

AUTHORITY NOTE: Promulgated in accordance with R.S. 1171, et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 28:

Family Impact Statement

In accordance with the Administrative Procedures Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of these amendments to the procedures for lost property claims will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Interested persons may submit oral or written comments to Richard L. Stalder, Department of Public Safety and Corrections, Box 94304, Capitol Station, Baton Rouge, Louisiana 70804-9304, (225) 324-6741. Comments will be accepted through the close of business at 4:30 p.m. on February 20, 2002.

Richard Stalder  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Juvenile Administrative Remedy  
Procedure**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The changes in the administrative remedy procedure resulting from this rule are designed to streamline the handling of grievances and provide a final administration decision in a more timely manner. There are no estimated implementation costs since this is only a change in existing procedures. Pending grievances will be processed under the existing rule and, after the effective date, new filings will be processed under the new rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no estimated effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated costs and/or economic benefits to directly affected persons since this is merely a change in procedures for an existing grievance procedure.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no estimated effect on competition and employment.

Robert B. Barbor  
Executive Counsel  
0201#069

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Corrections Services  
Office of Adult Services**

**Lost Property Claims (LAC 22:I.369)**

The Department of Public Safety and Corrections, Corrections Services, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby provides notice of its intent to amend the Lost Property Claim Rule.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 3. Adult and Juvenile Services**

**Subchapter A. General**

**§369. Lost Property Claims**

A. The purpose of this section is to establish a uniform procedure for handling "lost property claims" filed by inmates in the custody of the Department of Public Safety and Corrections. All wardens are responsible for implementing and advising inmates and affected employees of its contents.

B. When an inmate suffers a loss of personal property, he may submit a claim to the warden. The claim should be submitted on the attached Form A. The claim must include the date the loss occurred, a full statement of the circumstances which resulted in the loss of property, a list of the items which are missing, the value of each lost item, and

any proof of ownership or value of the property available to the inmate. All claims for lost personal property must be submitted to the warden within 10 days of discovery of the loss.

C. Under no circumstances will an inmate be compensated for an unsubstantiated loss, or for a loss which results from the inmate's own acts or for any loss resulting from bartering, trading, selling to, or gambling with other inmates.

D. The warden, or his designee, will assign an employee to investigate the claim. The investigative officer will investigate the claim fully and will submit his report and recommendations to the warden, or his designee.

E. If a loss of an inmate's personal property occurs through the negligence of the institution and/or its employees, the inmate's claim may be processed in accordance with the following procedures.

1. Monetary

a. The warden, or his designee, will recommend a reasonable value for the lost personal property (with the exception of personal clothing) as described on Form A. Liability will be pursuant to Department Regulation No. C-03-007 "Inmate Personal Property List, State Issued Items, Procedures for the Reception, Transfer, and Disposal of Inmate Personal Belongings;"

b. Forms B and C will be completed and submitted to the inmate for his signature; and

c. The claim will be submitted to the assistant secretary of Adult Services for review and final approval.

2. Nonmonetary

a. The inmate is entitled only to state issue where state issued items are available.

b. The institution's liability for any lost inmate clothing will be limited to the following.

i. For inmates processed through HRDC/WRDC/FRDC prior to March 31, 2000, replacement is limited to state issue where state issue is available.

ii. For inmates received through HRDC/WRDC/FRDC on or after March 31, 2000, the state does not assume liability for any personal clothing.

c. The warden, or his designee, will review the claim and determine whether or not the institution is responsible.

d. Form B will be completed and submitted to the inmate for his signature.

e. Form C will be completed and submitted to the inmate for his signature when state issue replacement has been offered.

E. If the warden, or his designee, determines that the institution and/or its employees are not responsible for the inmate's loss of property, the claim will be denied, and Form B will be submitted to the inmate indicating the reason. If the inmate is not satisfied with the resolution at the unit level, he may indicate by checking the appropriate box on Form B and submitting it to the screening officer within five days of receipt. The screening officer will provide the inmate with an acknowledgment of receipt and date forwarded to the assistant secretary of Adult Services. A copy of the inmate's original Lost Personal Property Claim (Form A) and Lost Personal Property Claim Response (Form B) and other relevant documentation will be attached.

F. Form A C Lost Personal Property Claim

FORM A

LOST PERSONAL PROPERTY CLAIM

1. Inmate: \_\_\_\_\_  
(Inmate's Name, DOC #, and location)
  2. Date of Loss: \_\_\_\_\_
  3. Circumstances which resulted in the loss of personal property:  
\_\_\_\_\_  
\_\_\_\_\_
  4. Items lost (include description) and value:  
\_\_\_\_\_  
\_\_\_\_\_
- NOTE: False claims or false representations of lost items' value will subject the inmate to disciplinary action.
5. Must attach proof of ownership and proof of value.
  6. A claim must be submitted within 10 days of the date of loss. The claim is to be submitted to the Warden.

SUBMITTED BY: \_\_\_\_\_  
Inmate's Signature      DOC #      Date

G. Form B C Lost Personal Property Claim Response

FORM B

LOST PERSONAL PROPERTY CLAIM RESPONSE

CLAIM # \_\_\_\_\_  
DATE: \_\_\_\_\_  
TO: \_\_\_\_\_  
(Inmate's Name, DOC # and location)  
FROM: \_\_\_\_\_

Your request for reimbursement/settlement/replacement of your lost personal property has been reviewed with the below recommended actions:

- DENIED
- \_\_\_\_\_ Your records were reviewed and no proof of ownership is indicated
  - \_\_\_\_\_ Unallowable item at this institution
  - \_\_\_\_\_ Clothing/items improperly marked according to inmate posted policy
  - \_\_\_\_\_ Item illegally obtained
  - \_\_\_\_\_ Investigation reveals loss resulted from barter, gambling, or sale
  - \_\_\_\_\_ Investigation has proved your claim invalid or unsubstantiated
  - \_\_\_\_\_ Loss resulted in irresponsibility on your part to keep personal items secure in footlocker, cell, etc.
  - \_\_\_\_\_ Other \_\_\_\_\_

- APPROVED
- \_\_\_\_\_ You are being offered state issue items as replacement for the items reported missing
  - \_\_\_\_\_ Monetary settlement in the amount of \$ \_\_\_\_\_ will be processed
  - \_\_\_\_\_ Other \_\_\_\_\_

Signature of Investigating Officer \_\_\_\_\_

\_\_\_\_\_  
WARDEN  
\_\_\_\_\_  
Inmate's Signature      DOC #      Date

- I am not satisfied with this decision and wish to appeal to the Assistant Secretary of Adult Services

H. Form C C Agreement

FORM C

AGREEMENT

I, \_\_\_\_\_, (Inmate's name and DOC #), having filed a claim for lost property on \_\_\_\_\_ do hereby acknowledge receipt of \_\_\_\_\_ as full settlement, compromise, and discharge of any and all liability which exists or which might exist, and do hereby agree to release and discharge the State of Louisiana, Department of Public Safety and Corrections, and any and all of its agents, representatives, officers, and employees from any and all liability for compensation, damages, and all other amounts, if any, which might be due me by reason of the loss reported on \_\_\_\_\_ (date) (whether the liability, if any, be in damages, tort, or otherwise, or whether the liability, if any, be under the laws of the State of Louisiana, or the laws of the United States.) I agree to have this claim processed and settled in accordance with the terms set forth in the agreement.

WITNESSES:  
\_\_\_\_\_  
Inmate's Signature      DOC #  
\_\_\_\_\_  
Date

WARDEN'S APPROVAL \_\_\_\_\_

SECRETARY'S APPROVAL \_\_\_\_\_  
(necessary only for monetary settlement)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, of Adult Services, LR 19:657 (May 1993), amended LR 28:

Interested persons may submit written comments to Richard L. Stalder, Secretary, Department of Public Safety and Corrections, Corrections Services, 504 Mayflower Street, Baton Rouge, LA 70802, or by facsimile to (225) 342-3095. All comments must be submitted by 4:30 p.m., February 20, 2002.

**Family Impact Statement**

In accordance with the Administrative Procedure Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of the amendments to the procedures for lost property claims will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Richard L Stalder  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Lost Property Claims**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The Department is only making technical changes to the existing rule and therefore no implementation costs are anticipated.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Robert B. Barbor  
Executive Counsel  
0201#068

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Policy Services Division**

Certain Imported Cigarettes  
(LAC 61:1.5101)

The Department of Revenue, in accordance with the provisions of R.S. 13:5062(10), R.S. 47:1511, and the Administrative Procedure Act, R.S. 49:951 et seq., proposes to adopt this rule. The rule is needed to establish procedures for obtaining information for the enforcement of the conditions of the Master Settlement Agreement.

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 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 revocation or suspension of any permit issued under R.S. 47:844, in accordance with R.S. 47:844.A(4).

D. When it is determined that a registered wholesale tobacco dealer is not in compliance with this rule, the secretary shall give that wholesale dealer written notice by registered mail of the noncompliance and request compliance within 15 days. Upon a second instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to, within 10 days, show cause why the wholesale dealer's permit shall

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

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

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

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

**Family Impact Statement**

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is to be published with the notice of intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation of this proposed rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and super-vision of their children. Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, arguments, information, or comments on this proposed rule in writing to Linda Denney, Senior Policy Consultant, Office of Legal Affairs, Policy Services Division, 617 North Third Street, Baton Rouge, LA 70802 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, February 26, 2002. A public hearing will be held on Wednesday, February 27, 2002 at 2 p.m. at 617 North Third Street, Baton Rouge, LA.

Cynthia Bridges  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Certain Imported Cigarettes**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no implementation costs as a result of this proposed rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There should be no effect on revenue collections of state or local governmental units as a result of this proposed rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Implementation of this proposed rule will have little effect on the tobacco wholesalers who file tax returns as the information required on the supplemental schedule is information already being retained by the wholesaler for the secretary's examination.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed rule should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0201#058

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Policy Services Division**

Electronic Funds Transfer  
(LAC 61:I.4910)

Under the authority of R.S. 47:1511 and 1519 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue intends to amend LAC 61:I.4910 pertaining to the electronic transfer of funds in payment of various taxes due the state of Louisiana.

These amendments reflect procedural changes in the processing of taxpayers who are required to make electronic transfer of funds in payment of taxes, fees, and other amounts due to be paid to the Department of Revenue. The Department is updating the rule for these changes and to further clarify the requirements associated with electronic funds transfers.

**Title 61**

**REVENUE AND TAXATION**

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

**Chapter 49. Tax Collection**

**§4910. Electronic Funds Transfer**

**A. Electronic Funds Transfer Requirements**

1. Taxpayers are required to remit their respective tax or taxes electronically or by other immediately investible funds as described in R.S. 47:1519 if any of the following criteria are met:

a. the payments made in connection with the filing of any business tax return or report averaged, during the prior 12-month period, \$20,000 or more per reporting period; or

b. any business tax return or report is filed more frequently than monthly and the average total payments during the prior 12-month period exceed \$20,000 per month; or

c. any company who files withholding tax returns and payments on behalf of other taxpayers and payments during the previous 12-month period averaged \$20,000 or more per month for all tax returns filed.

2. Any taxpayer whose tax payments for a particular tax averages less than \$20,000 per payment may voluntarily remit amounts due by electronic funds transfer with the approval of the secretary. After requesting to electronically transfer tax payments, the taxpayer must continue to do so for a period of at least 12 months.

B. Definitions. For the purposes of this Section, the following terms are defined.

*Automated Clearinghouse Credit*—an automated clearinghouse transaction in which taxpayers through their own banks, originates an entry crediting the state's bank account and debiting their own bank account. Banking costs incurred for the automated clearinghouse credit transaction shall be paid by the person originating the credit.

*Automated Clearinghouse Debit*—an automated clearinghouse transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the taxpayer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

*Business Tax*—any tax, except for individual income tax, collected by the Department of Revenue.

*Electronic Funds Transfer*—any transfer of funds other than a transaction originated by check, draft, or similar paper instrument, that is initiated electronically so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfer shall be accomplished by an automated clearinghouse debit or automated clearinghouse credit. Federal Reserve Wire Transfers (FedWire) may be used only in emergency situations and with prior approval from the department.

*FedWire Transfer*—any transaction originated by taxpayers utilizing the national electronic payment system to transfer funds through the Federal Reserve banks, when the taxpayers debit their own bank accounts and credit the state's bank account. Electronic funds transfers may be made by FedWire only if payment cannot, for good cause, be made by automated clearinghouse debit or credit and the use of FedWire has the prior approval of the department. Banking costs incurred for the FedWire transaction shall be paid by the person originating the transaction.

*Other Immediately Investible Funds*—cash, money orders, bank draft, certified check, teller's check, and cashier's checks.

*Payment*—any amount paid to the Department of Revenue representing a tax, fee, interest, penalty, or other amount.

C. Taxes Required to be Electronically Transferred. Tax payments required to be electronically transferred may

include corporation income and franchise taxes including declaration payments; income tax withholding; sales and use taxes; severance taxes; excise taxes; and any other tax or fee administered or collected by the Department of Revenue. A separate transfer shall be made for each return.

#### D. Taxpayer Notification

1. Those taxpayers required to electronically transfer tax payments will be notified in writing by the department of the electronic funds transfer data format and procedures at least 90 days prior to the required electronic funds transfer effective date. The taxpayer will be given payment method options (ACH debit, ACH credit, or other immediately investible funds) from which to select. Depending on the method selected, the taxpayer will be required to submit specific information needed to process electronic payments. Before using ACH debit, the taxpayer must register at least 60 days in advance. Once required to remit taxes by electronic funds transfer, the taxpayer must continue to do so until notified otherwise by the department.

2. After one year, taxpayers whose average payments have decreased below the threshold may request to be relieved of the electronic funds transfer requirement.

3. Taxpayers experiencing a change in business operations that results in the average payments not meeting the requirements, may request to be relieved of the electronic funds transfer requirement. "Change in business operations" shall include changing of pay services for the purpose of filing income tax withholding.

#### E. Failure to Timely Transfer Electronically

1. Remittances transmitted electronically are considered paid on the date that the remittance is added to the state's bank account. Failure to make payment or remittance in immediately available funds in a timely manner, or failure to provide such evidence of payment or remittance in a timely manner, shall subject the affected taxpayer or obligee to penalty, interest, and loss of applicable discount, as provided by state law for delinquent or deficient tax, fee or obligation payments. If payment is timely made in other than immediately available funds, penalty, interest, and loss of applicable discount shall be added to the amount due from the due date of the tax, fee or obligation payment to the date that funds from the tax, fee, or obligation payment subsequently becomes available to the state.

2. When the statutory filing deadline, without regard to extensions, falls on a Saturday, Sunday, or Federal Reserve holiday, the payments must be electronically transferred in order to be received by the next business day. Transfer must be initiated no later than the last business day prior to the filing deadline. Deadlines for initiating the transfer for ACH credits are determined by the taxpayer's financial institution. Deadlines for ACH debits are established by the payment processor and specified in instructions provided by the department.

3. If a taxpayer has made a good faith attempt and exercises due diligence in initiating a payment under the provisions of R.S. 47:1519 and this rule, but because of unexpected problems arising at financial institutions, Federal Reserve facilities, the automated clearinghouse system, or state agencies, the payment is not timely received, the delinquent penalty may be waived as provided by R.S. 47:1603. Before a waiver will be considered, taxpayers must

furnish the department with documentation proving that due diligence was exercised and that the delay was clearly beyond their control.

4. Except for the withholding tax return, Form L-1, the filing of a tax return or report is to be made separately from the electronic transmission of the remittance. Failure to timely file a tax return or report shall subject the affected taxpayer or obligee to penalty, interest, and loss of applicable discount, as provided by state law.

5. In situations involving extenuating circumstances as set forth in writing by the taxpayer and deemed reasonable by the secretary of the Department of Revenue, the secretary may grant an exception to the requirement to transmit funds electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 19:1032 (August 1993), repromulgated LR 19:1340 (October 1993), amended LR 20:672 (June 1994), LR 23:448 (April 1997), LR 28:

#### **Family Impact Statement**

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the notice of intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation of this proposed rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, arguments, information, or comments on these proposed amendments in writing to Linda Denney, Senior Policy Consultant, Office of Legal Affairs, Policy Services Division, 617 North Third Street, Baton Rouge, LA 70802 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, February 26, 2002. A public hearing will be held on Wednesday, February 27, 2002, at 10 a.m. at 617 North Third Street, Baton Rouge, LA.

Cynthia Bridges  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Electronic Funds Transfer**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There should be no implementation costs associated with the proposed amended rule.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There should be no effect on revenue collections of state or local governmental units as a result of the proposed amendments to this rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There should be no effect on the costs for taxpayers who file their tax returns.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0201#081

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

#### **Federal Income Tax Reduction (LAC 61:I.1307)**

Under the authority of R.S. 47:293(3), R.S. 47:297.B, R.S. 47:295, R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1307 relative to the federal income tax deduction.

Louisiana Revised Statute 47:293(3) defines "federal income tax liability" to mean "the total amount of tax due to the United States for the taxable period on the individual income tax return required to be filed by any taxpayer, except that social security taxes and self-employment taxes shall not be included." The adoption of LAC 61:I.1307 will clarify the federal income tax deduction.

#### **Title 61**

#### **REVENUE AND TAXATION**

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

#### **Chapter 13. Income: Personal**

#### **§1307. Federal Income Tax Deduction**

A. Individual income taxpayers who deduct the federal income tax liability defined in R.S. 47:293(3) and are due a credit for foreign taxes, shall be allowed two options for computing the federal income tax liability deduction. The taxpayer may either:

1. use a federal tax liability that has been reduced by the federal credit for foreign taxes allowed by Internal Revenue Code Section 27, and take the Louisiana credit for federal credits provided by R.S. 47:297.B; or

2. use a federal tax liability that has not been reduced by the federal credit for foreign taxes allowed by Internal Revenue Code Section 27, and forego any claim to the Louisiana credit for federal credits provided by R.S. 47:297.B.

AUTHORITY NOTE: Adopted in accordance with R.S. 47:293(3), R.S. 47:297.B, R.S. 47:295, and R.S. 47:1511.

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

#### **Family Impact Statement**

The proposed adoption of LAC 61:I.1307, regarding the federal income tax deduction should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically:

1. The implementation of this proposed rule will have no known or foreseeable effect on the stability of the family.

2. The implementation of this proposed rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The implementation of this proposed rule will have no known or foreseeable effect on the functioning of the family.

4. The implementation of this proposed rule will have no known or foreseeable effect on family earnings and family budgets.

5. The implementation of this proposed rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be submitted no later than 4:30 p.m., January 24, 2002. A public hearing will be held on January 25, 2002, at 2:30 p.m. in the Legal Conference room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana 70802.

Cynthia Bridges  
Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Federal Income Tax Reduction**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The implementation of this proposed regulation, which clarifies the application of the federal income tax deduction to individual income taxpayers, will have no impact on the agency's costs.

The implementation of this proposed regulation will have no impact upon any local governmental units.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There should be no effect on revenue collections for the state as a result of this proposed regulation.

There should be no effect on revenue collections of local governmental units as a result of this regulation.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There should be no costs or economic benefits that directly affect persons or non-governmental groups as a result of this proposed regulation.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0201#032

H. Gordon Monk  
Staff Director  
Legislative Fiscal Officer

#### **NOTICE OF INTENT**

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

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

Under the authority of R.S. 47:201.1 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1401 relative to composite returns and composite payments of tax made by a partnership or limited liability company on behalf of nonresident partners or members.

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 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 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.

The text of this proposed rule can be viewed in its entirety in the Emergency Rule Section of this issue of the *Louisiana Register*.

#### **Family Impact Statement**

The proposed adoption of LAC 61:I.1401, regarding partnership composite returns and composite payments of tax made by a partnership or limited liability company on

behalf of nonresident partners or members should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m. February 26, 2002. A public hearing will be held on Wednesday, February 27, 2002, at 1:30 p.m. in the River Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Cynthia Bridges  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Partnership Composite Returns and  
Payments**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The implementation of this proposed regulation will have no impact upon any local governmental units.

The implementation of this proposed regulation, which requires certain entities taxed as partnerships to file composite returns, will have a minor impact on the agency's costs. The number of returns is expected to be small. The primary cost will be the cost of examining the returns for names of nonresident natural persons not filing individual income tax returns. There will be minimal costs associated with storing the returns and agreements signed by partners. In the future, there will be the cost of entering the information into the information data storage. These costs are expected to be minimal and will be absorbed utilizing existing resources.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There should be no effect on revenue collections of local governmental units as a result of this proposed regulation. There should be some increase in revenue collections for the state due to improved compliance of nonresident partners and members reporting income from Louisiana sources. The information provided from the composite returns will necessitate some audits that should generate additional revenue. The size of that increase cannot be determined.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

Partnerships and limited liability companies with nonresident partners or members that have business activities within the state will have the cost of preparing the composite return or filing agreements from nonresident partners or members.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0201#033

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT  
Department of Social Services  
Office of Family Support**

TANF Initiatives (LAC 67:III.5507, 5511, 5541, and 5547)

The Department of Social Services, Office of Family Support, proposes to adopt LAC 67:III, Subpart 15, §§5507, 5511, 5541, and 5547.

The Notice of Intent to adopt these sections was published in November 2001. However, the sections will not be included in that final rule but are herein included as a separate rule for the reason explained: the agency has determined that eligibility factors as originally published for these TANF Initiatives were not consistent with the Memorandum of Understanding which implemented each initiative. (These "corrections" were part of an emergency rule effective November 30, 2001, published in the December 2001 *Louisiana Register*.)

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 15. Temporary Assistance to Needy Families  
(TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5507. Adult Education, Basic Skills Training, Job  
Skills Training, and Retention Services Program**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Workforce Commission to provide adult education, basic skills training, jobs skills training, and retention services to low income families. Employed participants will be provided child care and transportation services. Unemployed participants will be provided short-term child care and transportation services.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by providing education, training, and employment-related services to low income families in order to promote job preparation, work, and marriage.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), Free or Reduced School Lunch, or who has earned income at or below 200 percent of the federal poverty level. Within the needy family, only the parent or caretaker relative is eligible to participate. A needy family also includes a non-custodial parent who has earned income at or below 200 percent of the federal poverty level. Families who lose FITAP eligibility because of earned income are considered needy for a period of one year following the loss of cash assistance.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

#### **§5511. Micro-Enterprise Development**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Office of Women's Services to provide assistance to low-income families who wish to start their own businesses.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage. This goal will be accomplished by providing assistance to low-income families through the development of comprehensive micro-enterprise development opportunities as a strategy for moving parents into self-sufficiency.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), Free or Reduced School Lunch, or who has earned income at or below 200 percent of the federal poverty level. Only the parent or caretaker relative within the needy family is eligible to participate.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

#### **§5541. Court-Appointed Special Advocates**

A. OFS shall enter into a Memorandum of Understanding with the Supreme Court of Louisiana to provide services to needy children identified as abused or neglected who are at risk of being placed in foster care or, are already in foster care. Community advocates provide information gathering and reporting, determination of and advocacy for the children's best interests, and case monitoring to provide for the safe and stable maintenance of the children or return to their own home.

B. The services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in the home of relatives by ensuring that the time children spend in foster care is minimized.

C. Eligibility for services is limited to needy families, that is, one in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP) benefits, Supplemental Security Income (SSI), Free or Reduced School Lunch, or who has earned income at or below 200 percent of the federal poverty level.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

#### **§5547. Housing Services**

A. The Department of Social Services, Office of Family Support, may enter into Memoranda of Understanding or contracts to create pilot programs that provide transitional, short-term, or one-time housing services to needy families with minor children who participate in self-sufficiency activities, who are at risk of losing existing housing arrangements, who are in an emergency situation, or who face ineligibility because of increased earnings. These services can include but are not limited to: relocation assistance; costs associated with moving or relocation; down payment of deposit and/or initial month's rent; short-term continuation of a housing voucher; down payment for the purchase of a house; housing counseling and homebuyer education for prospective homeowners; or other transitional services determined in conjunction with the Department of Social Services and the Division of Administration.

B. These services meet the TANF goal to provide assistance to needy families so that children can be cared for in their own homes or the homes of relatives and the TANF goal to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.

C. Eligibility for services is limited to parents, legal guardians, or caretaker relatives of minor children who are members of a needy family. A needy family is one in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaChip) benefits, Supplemental Security Income (SSI), Free or Reduced Lunch, Housing and Urban Development (HUD)-funded services, or who has earned income at or below 200 percent of the federal poverty level.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

#### **Family Impact Statement**

This rule will have no impact on the stability and functioning of the family or on parental rights or the behavior or personal responsibility of the children and will have no impact on the budget of the affected family since benefits provided by the affected Initiatives are in the form of services.

All interested persons may submit written comments through February 27, 2002, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed rule will be held on February 27, 2002, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special

services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Gwendolyn P. Hamilton  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: TANF Initiatives**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Act 12 of the Regular Session of the Louisiana Legislature authorized the TANF Initiatives. Although the proposed initiatives were contained in a Notice of Intent published in November 2001, four of these were thereafter determined to contain errors in eligibility factors. They will not be published in the final Rule but will process now as a separate rule in accordance with the APA. Act 12 authorized a total of \$16,600,000 to be funded by the TANF Block Grant to Louisiana in FY 01/02 on these four initiatives. The minimal cost of publishing the rule is routinely included in the agency's budget. Future expenditures are subject to legislative appropriation.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no impact on revenue collections for state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There will be no resulting costs or economic benefits to any persons or nongovernmental groups secondary to this proposed rule. The assistance to eligible clients is nearly 100 percent in the form of services. However, a long term objective of the initiatives is economic improvement of the targeted families units.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will have no impact on competition and employment. Any new positions for these initiatives are at the discretion of the TANF partners and none are known to the agency at this time.

Ann Williamson  
Assistant Secretary  
0201#062

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

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

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate rules for the transfer of a mullet permit in accordance with R.S. 56:333(H).

**Title 76**

**WILDLIFE AND FISHERIES**

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

**Chapter 3. Saltwater Sport and Commercial Fishing  
§343. Rules for Harvest of Mullet**

A. - E.3. ...

4. Notwithstanding LAC 76:VII.343.E.2, the department, upon application from an individual who is  
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currently permitted to commercially take mullet, may transfer a valid mullet permit under the following requirements and conditions:

a. The transferee must possess and provide the department his/her social security number.

b. The transferee must possess a valid commercial fishing license and shall provide proof that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in the calendar year immediately prior to the year of application. Proof shall be for the tax year immediately prior to the application for transfer, and shall be in the form of an IRS transcript stamped by the local office, plus a copy of the applicant's personal file copy of his or her completed tax return for that year including all schedules and Form W-2s.

c. The transferee shall not currently possess a mullet permit nor have been permanently barred from the mullet fishery.

d. The transferor and the transferee each must certify that there shall be no financial gain realized for the transfer of such license or permit in accordance with department guidelines.

e. Any mullet permit found to have been transferred for financial gain shall be rendered void, shall immediately be surrendered to the department, and shall not be reissued.

5. In the case of a proven physical hardship, the department, upon written request from an individual who is currently permitted to commercially take mullet, may transfer a valid mullet permit into the name of the spouse, parent/legal guardian, or child/legal dependent of such person under the following requirements and conditions:

a. A mullet permit holder shall make a written request that includes the name, address and social security number of both the permit holder and the person to whom the license is requested to be transferred and shall set forth in detail the reasons justifying the request.

b. The mullet permit holder must present documentation sufficient to prove relationship as being the spouse, parent/legal guardian, or child/legal dependent, between the permit holder and the person to whom the permit is to be transferred. Examples of documents tending to establish such proof would include marriage license, birth certificate and/or judgment of legal guardianship.

c. The mullet permit holder must provide a signed statement from the treating physician setting forth the specific nature and extent of the disability together with a statement that the condition prevents participation in commercial fishing activities.

F. A valid mullet permit may only be transferred from a mullet permit holder who has no pending mullet charges for violating any provisions of R.S. 56:333 or any commission rule or regulation adopted pursuant to R.S. 56:333 after August 15, 2001. The provisions of R.S. 56:333.F shall apply to permit transfer recipients. Permits under suspension or revocation shall not be transferable during any suspension or revocation period.

G. Any person who transfers a mullet permit shall be precluded thereafter from obtaining a mullet permit whether by transfer or other method.

H. General Provisions. Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the

possession of mullet on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet 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.

I. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:325.1, R.S. 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992) amended LR 21:37 (January 1995), LR 22:236 (March 1996), LR 24:359 (February 1998), LR 26:2332 (October 2000), LR 28:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to Janis Landry, License Section, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, March 7, 2002.

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Thomas M. Gattle, Jr.  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Harvest of Mullet**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Implementation costs of the proposed rule to the state are estimated to be negligible due to the small number of anticipated transfers and lack of incentives associated with a transfer. Local governmental units will not be impacted.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenues to state or local governmental units from the proposed rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule will only affect commercial fishers who would like to participate in the mullet fishery but cannot due to current qualifying criteria. Those commercial fishers, who meet the requirements and conditions of the proposed rule and are able to find a valid mullet permit holder willing to transfer his/her mullet permit, will be able to obtain a mullet permit. No additional costs will be incurred from the proposed rule except for the normal cost of purchasing a mullet permit. Individuals

who voluntarily transfer their mullet permit to a qualified commercial fisher forgo any benefits associated with their permit. Qualified commercial fishers who obtain a mullet permit under the proposed rule will obtain the opportunity to realize economic benefits from being able to harvest and sell their mullet catch to willing buyers.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on competition or employment in the public or private sector.

James L. Patton  
Undersecretary  
0201#059

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Hunting Preserve Regulations (LAC 76:V.305)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend the rules governing hunting preserves.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part V. Wild Quadrupeds and Wild Birds**

**Chapter 3. Wild Birds**

**§305. Hunting Preserve Regulations**

A. As provided by R.S. 56:651, the department may issue a license to operate Hunting Preserves. Hunting preserves are to be operated under the following regulations.

**1. Application Requirements**

a. Application shall be made in writing on forms provided by the department.

b. Applicant must provide proof of ownership or verification of exclusive hunting rights from the landowner of the property the hunting preserve is to be operated. This is to be returned with the application.

c. All applicants, including applicants for renewal as required by the department, must provide a written operational plan detailing the type(s) of birds to be released, the method(s) and time of release, and location(s) of release. A description of hunting activities that occur or are likely to occur on the preserve and surrounding property must also be included. In the case of hunting preserves approved to utilize mallards, a map must be included in the operational plan which indicates the release site, water areas, and shooting areas. A license will not be issued until the operational plan has been approved by the department. Deviation from the approved operational plan is permitted only with written consent of the department.

d. The department may revoke/deny any hunting preserve license for failure to comply with any fish or wildlife laws, for reasons relating to disease or public health, for deviation from an approved operational plan, or for failure to abide by the rules and regulations established for this hunting preserve program. Revocation/denial shall be for a minimum of one entire hunting preserve season.

e. New applications must be received prior to August 1 for operation during the forthcoming hunting preserve season.

**2. Suitability of Area for Use as a Hunting Preserve**

a. No license for a hunting preserve shall be issued until an on-site investigation has been completed by the department and the department has determined that the property is suitable for the purpose of the proposed hunting preserve. The department shall base its determination on whether or not the proposed shooting area will cause conflicts with wild migratory game bird hunting, or be in violation of state and federal regulations concerning the feeding of migratory waterfowl or the use of live decoys, that the establishment of the shooting area will be in the public interest, and that the operation of a hunting preserve at the location specified in the application will not have a detrimental effect upon wild migratory or resident game birds.

b. No license shall be issued for any hunting preserve situated on a marsh, lake, river or any other place where there are concentrations of wild waterfowl or if its operations are likely to result in attracting such concentrations of wild waterfowl.

c. No hunting preserve using mallards shall be located within five miles of any wildlife area with significant waterfowl concentrations owned or leased by the state or federal government or by non-profit conservation organizations.

d. Licenses for hunting preserves using mallards will not be issued in the coastal zone, defined as that area south of I-10 from the Texas state line to Baton Rouge, south of I-12 from Baton Rouge to Slidell and south of I-10 from Slidell to the Mississippi state line.

e. No license shall be issued for the use of pheasants on any hunting preserve situated within areas with medium to high turkey populations. In areas with low turkey populations and low potential for expansion, pheasants may be used. This determination will be made at the local level by a department biologist in consultation with the turkey study leader. Agricultural areas contiguous to occupied turkey habitat may use pheasants if the preserve boundaries are at least one-half mile from the nearest woodland.

f. The licensee is responsible for notifying the department of changes in activities or conditions that may affect the suitability of the property for a hunting preserve. If at any time, the department determines that activities or conditions on the hunting preserve or surrounding property, make the property unsuitable for a hunting preserve, or that continued operation of the hunting preserve is not consistent with these regulations, the department may immediately revoke the hunting preserve license, or require modification of the operational plan.

g. Applicants and licensees are advised that hunting preserve licenses are issued following a review and recommendations by department staff. Licenses are issued on an annual basis for a 12-month term only. Changing conditions, including those such as climatic, biological, and land use, which may be beyond the control of the applicant/licensee, may result in certain applications not being granted, or licenses not being renewed. Annual renewal of hunting preserve licenses cannot be assured and applicants/licensees are cautioned to take these factors into consideration when making any investments or commitments which may relate to the continued issuance of a hunting preserve license.

### 3. Types of Releases Allowed

a. The use of mallards on hunting preserves is limited to those operations whereby domestic mallards are released in a controlled fashion to proceed over positioned shooters in their flight path. No direct releases of any species of domesticated waterfowl into the wild for any sporting purposes or for any reasons are permitted within the state.

b. Quail may be released after September 1 on hunting preserves for the purpose of providing coveys for hunting. Pheasants and chukars may not be released on hunting preserves more than one day prior to a scheduled hunt. No direct releases of domesticated game birds, including but not limited to quail, pheasants and chukars, into the wild for purpose of population establishment are permitted within the state.

c. All quail and mallards must be banded in accordance with R.S. 56:654(4) prior to release.

### 4. Inspection of Permitted Areas and Domesticated Game Birds

a. Applicant must provide proof that the birds to be released originated from a source flock participating in the National Poultry Improvement Plan (NPIP) within 365 days prior to release and have not been in contact with birds from non-NPIP sources.

b. The premises of game bird production facilities and/or holding pens may be inspected by the department or by a designated agent for assessment of health of birds and sanitation of facilities. General pen requirements must conform to those adopted by the Louisiana Wildlife and Fisheries Commission for game breeders.

c. Accurate records of animal husbandry and mortality must be maintained at production/holding facilities and will be subject to periodic inspection by the department.

d. Every person who brings or causes to be brought into this state live domestically reared game birds for shooting purposes must comply with Livestock Sanitary Board regulations on livestock, poultry, and wild animals (R.S. 7:11705, 11767 and 11789). A copy of the health certificate must also be forwarded to the Department of Wildlife and Fisheries within 10 days for each shipment of birds. Any shipment of birds not accompanied by a health certificate shall be destroyed or returned to the place of origin by the importer at his sole cost and responsibility.

5. Hunting Licenses Requirements. A basic hunting license or hunting preserve license is required of all persons hunting on hunting preserves. In addition, a Louisiana Waterfowl Hunting License (formerly known as a state duck stamp) is required as provided by law of all persons taking or hunting mallards on any hunting preserves.

6. Season Dates. The season during which shooting will be permitted shall be set by the Louisiana Wildlife and Fisheries Commission. The current season is fixed for the period of October 1 through April 30.

7. Shooting Hours. Shooting hours for hunting preserves shall be set by the Louisiana Wildlife and Fisheries Commission. The current hours are one-half hour before sunrise to sunset.

### 8. Methods of Take

a. Shotguns 10 gauge or smaller capable of holding no more than three shells in the magazine and chamber combined; nontoxic shot is required for hunting mallards on hunting preserves approved for use of mallards;

- b. muzzle-loading shotguns;
- c. falconry;
- d. archery equipment

B. Existing state laws R.S. 56:651-659 and federal law 50 CFR 21:13 address bird banding, bird identification, bird transportation, reports and records and other issues. Compliance with these state and federal laws are mandatory. Hunting and taking of wild migratory and wild resident game birds on licensed hunting preserves must conform to all state and federal hunting regulations, including, but not limited to: non-toxic shot requirements, federal duck stamp requirements, live decoy prohibition, seasons, and bag limits.

C. Changes in Rules. The Louisiana Wildlife and Fisheries Commission, Louisiana Department of Agriculture and the U.S. Fish and Wildlife Service may from time to time make changes in these rules and it is the responsibility of the licensee to apprise himself of any changes and to abide by them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:651-659.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1136 (October 1992), amended LR 28:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to Tommy Prickett, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Tuesday, March 5, 2002.

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection

with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Thomas M. Gattle, Jr.  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Hunting Preserve Regulations**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

During FY 02-03 the implementation cost to the Department of Wildlife and Fisheries is estimated at \$750, or the equivalent of three man-days of work by existing personnel. Cost in subsequent years is estimated at \$250 per year.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effect on revenue collections of state or local governmental units is anticipated.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Each year 20-30 hunting preserve licenses are issued. Cost to these licensees will be minimal. Current licensees will probably invest about 1 hour of time in FY 02-03 to comply with the new requirements. Less time will be required in subsequent years. New applicants (5-10 per year) are expected to spend 1 hour or less to comply when they apply for a hunting preserve license.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition and employment is anticipated.

James L. Patton  
Undersecretary  
0201#060

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office